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[August, 1882.]

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THE
SETTLED LAND ACT,
1882.

THE
SETTLED LAND ACT,
1882.

WITH
NOTES AND AN INTRODUCTORY CHAPTER.

TOGETHER WITH
*PRECEDENTS OF SETTLEMENTS, CONVEYANCES
AND PETITIONS,*

AND
MISCELLANEOUS FORMS,

ADAPTED FOR USE UNDER THE ACT.

BY
AUBREY ST. JOHN CLERKE, B.A.,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.



LONDON :
W. MAXWELL & SON, 8, BELL YARD, TEMPLE BAR,
Law Booksellers and Publishers.
MEREDITH, RAY, & LITTLER, MANCHESTER;
C. F. MAXWELL, MELBOURNE AND SYDNEY.
1882.

LONDON

BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

PREFACE.

EARLY in the first Session of 1880, Lord Cairns, then Lord Chancellor, presented to the House of Lords four Bills, two of which—the Conveyancing Act and the Solicitors Remuneration Act—received the Royal assent in the Session of 1881. The most important, however, of the four measures, in its probable consequences both to land owners and to lawyers, is that which, under the title of the Settled Land Act, 1882, comes into operation at the commencement of next year.

The parliamentary career of the Bill was, on the occasion of its first introduction, prematurely cut short by the Dissolution which took place in the succeeding month; and in subsequent Sessions it lost, through the change of Ministry, the advantages possessed by Government Measures. Three times was it passed in the Lords, and sent down to the Commons, but the progress of the Bill, though practically unopposed, was delayed by the extraordinary pressure of business in the Lower House. No attempt was made in 1880 to pass beyond the formal stage of first reading; while, in the next year, the House was counted out, when, in the twilight of a May morning,

the order for second reading was at length reached. During the last Session its progress was at first more satisfactory, yet, when it was on June 6th referred to a Select Committee, it was considered as hopelessly "shelved" for that year. The Committee, however, displaying commendable energy, made their report early in July; and, after the amendments of the Commons had been agreed to, the Act on the 10th August received the Royal assent.

With the exception of one trivial amendment on a matter of detail, no division was ever taken upon the Bill at any stage, or in either House; the present and the late Lord Chancellors unite in their approval of its principles; and the Royal Commission on Agriculture, in their recently published Report, refer to it, as a "bold, comprehensive, and most valuable measure."

Opposite opinions have been expressed on platforms and in the press as to the value of this Act, and the extent of the reform which it has introduced into the Law of Settlement. Its chief importance is due to the circumstance that it effects a permanent alteration in the status of limited owners; conferring upon them powers of alienation which they cannot debar themselves from exercising, and which, in the author's opinion, no ingenuity of the settlor can effectually exclude.

Quite different, it must be observed, is the power which is here inseparably annexed to the estate, from that which is derived from the bounty of a testator, or, after numerous formalities, conceded with cautious reluctance by the Order of the Court.

The power of applying capital money in agricultural and manufacturing improvements is also of the first importance, and freed as it is from the discouraging influence of official surveillance, is one which is likely to be largely made use of.

Regarded as a measure of purely conveyancing reform, the Settled Land Act is by no means insignificant. The powers which have been hitherto inserted in every well-drawn settlement may now in most cases be omitted, and the draft thereby reduced to less than half its former dimensions.

In the following pages the author has illustrated the enactments contained in each section by reference to the previous law, and to various authorities bearing on the subject; and he hopes that his work may prove useful to the reader by supplying him with numerous cross-references from section to section of this somewhat complicated measure.

A number of Precedents have been added to furnish illustrations of the various powers of the Act; and in the Table of Cases, additional references have been supplied to all the Reports where the cited cases may be found. In these respects the author trusts that his labours may be of some practical assistance, and submits their result to the indulgent criticism of the legal profession.

A. ST. J. C.

LINCOLN'S INN,
October 24, 1882.

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THE SETTLED LAND ACT, 1882.

INTRODUCTORY CHAPTER.

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| <ol style="list-style-type: none"> 1. Scheme of the Act. 2. Settled Land. 3. Powers of Tenant for Life. 4. Checks for security of Remainderman. 5. Trustees of the Settlement. 6. The Court. 7. The Land Commissioners. 8. Capital money arising under the Act. 9. Investment and application of Capital money. | <ol style="list-style-type: none"> 10. Position of a Purchaser under the Act. 11. Incumbrances. 12. Limited owners who may exercise the powers. 13. Effect upon existing Settlements. 14. Effect upon the Settled Estates Act. 15. Exclusion of the Act. |
|--|--|

1.—*Scheme of the Act.*

THE general scheme of the Settled Land Act, which is ^{General} to come into operation on the 1st January, 1883, may ^{scheme of} _{Act.} be briefly described as follows:—

Whenever any estate or interest in land forms the subject of a Settlement (s. 2), the tenant for life or other limited owner entitled in possession (s. 58), may exercise the powers of sale, leasing, &c., conferred by the Act. These powers are made an incident of his estate, and cannot be assigned or released; any contract not to exercise them is declared to be void; and he is elaborately protected against any provision in the settlement inconsistent with the full and free exercise of the statutory powers (ss. 50—52).

While the tenant for life is thus endowed with the

widest discretion as to the disposition of the property, he cannot, (except by collusion with the trustees, or a purchaser) reap any personal benefit to the prejudice of the remaindermen. For, whenever capital money arises under the Act, it must be paid either to the trustees, or into court (s. 22). This constitutes an effective check upon actual misappropriation, and it will be found that precautions are also taken to guard against improvident investment.

The capital money may be applied according to the direction of the tenant for life, in any of the modes of investment authorized by s. 21; and if the trustees disapprove of the investment, they may apply to the Court for directions under s. 44.

A novel feature in this Act is the application of capital money for the improvement of the estate (s. 25); and adequate provision is made to prevent an expenditure upon unsuitable or unprofitable works, and also to secure their proper execution (s. 26).

Principle
of the
measure.

The principle which underlies the measure, and furnishes the key to its provisions is, that the tenant for life is to be regarded as the person most interested in the welfare of the estate; and that, subject to the necessary restrictions, he is to be trusted with the powers of an absolute owner.

It is, in fact, the most emphatic contradiction of the following statement, which occurs in Lord Eldon's judgment in *Mortlock v. Buller*, 10 Ves. 292. "The most improvident course that can be adopted is to intrust the tenant for life with the execution of such a power as this (*i.e.*, a power of sale); for it is generally the interest of the tenant for life to convert the estate absolutely into money, either with a view to sell another estate to his family, or for the ordinary purpose of getting a better income during his life." At p. 308.

2.—*Settled Land.*

Settlements of land are broadly divisible into two classes, differing not only in form, but also in the objects which they subserve. Two kinds of settlement.

The "real" or "strict" settlement is employed only in the case of large estates, which are intended to be preserved intact from generation to generation; and in this form the limitations are legal remainders, whereby the estates go successively to the father for life, with remainder to his first and other sons in tail male; the younger children being provided with portions, which ultimately become a charge upon the estates; and the "trustees of powers," as they are sometimes called, being entrusted with powers of sale, leasing, &c., with the consent of the tenant for life. Strict settlement.

In the other form of settlement, which is that adopted in ordinary cases, the land is vested in trustees upon trust for sale, and the actual trusts of the settlement are declared, not of the land, but of the personal fund produced by the sale; the rents and profits in the meantime being payable to the same persons, and in the same manner as if they were income produced by that fund. All the children of the marriage, moreover, who attain twenty-one, or marry, take in equal shares, instead of the estate going as a whole to the eldest son of the marriage, as in a strict settlement. The trust for sale, it should be observed, is only introduced for facility of ultimate distribution, and to enable the draftsman to adopt the more convenient form of a "personal" settlement. Settlement by trust for sale.

It will be found that the language of "The Settled Land Act" is pointed for the most part to strict settlements, and large estates; but express provision is made by s. 68 (a clause which was introduced at a late stage of the Bill), for the second class of settlements to which we have referred, *i.e.*, those made by way of trust for sale.

The application of the Act is by no means confined to settlements in the ordinary sense of the word; for the definition of "settlement" in s. 2 is of the most comprehensive. Settlements included in Settled Land Act.

hensive character, and includes "any deed, will, agreement for a settlement or other agreement, covenant to surrender, copy of Court Roll, Act of Parliament, or other instrument, or any number of instruments" under or by virtue of which any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession.

It is also extremely important to observe that it includes past as well as future settlements, and thus the whole body of the Act is, from and after the 31st Dec. 1882, sweepingly retrospective.

"Land" is by the definition clause extended beyond its primary signification, so as to comprehend "incorporeal hereditaments, and also an undivided share in land;" and the "settled land"—an expression constantly occurring throughout the Act—means the estate or interest which is the subject of a settlement.

A lease for years, a remainder or reversion, a rentcharge, an advowson, even a mortgage debt (see *Grey v. Jenkins*, 26 Beav. 351), may accordingly, as well as an estate in fee simple, be "settled land" within the meaning of the Act. It should, however, be observed that the greater number of its provisions are applicable solely to corporeal hereditaments.

Whenever there is a "settlement," i.e., limitations "by way of succession," then the powers conferred by the Act are capable of being exercised; but the subject matter affected by these powers is in all cases confined to the estate or interest which is actually comprised in the settlement.

It may not be superfluous to point out, that the Act may apply to the settlement of a personal fund, where, under the trust for investment, any estate or interest in land is "for the time being" actually held upon the trusts of the settlement.

For a more detailed examination of the meaning of the expressions "settlement" and "settled land," the reader is referred to the notes on s. 2, *post*, pp. 24, 26.

3.—*Powers of Tenant for Life.*

The various powers of the tenant for life may be most conveniently presented in the form of a table, as follows :—

Powers of
tenant for
life.

1. To sell, enfranchise, exchange, and make partition (s. 3).
2. To grant building, mining, and other leases (ss. 6, 12).
3. To accept surrenders (s. 13).
4. To grant licences to copyholders (s. 14).
5. To appropriate land for streets and open spaces (s. 16).
6. To raise money by mortgage for enfranchisement or for equality (s. 18).
7. To transfer an incumbrance from one part of the settled land to another (s. 5).
8. To convey the settled land in order to complete the exercise of the powers (s. 20).
9. To execute deeds and other instruments (s. 55).
10. To direct the form of investment (s. 22).
11. To execute improvements (s. 29).
12. To enter into binding contracts (s. 31).
13. To cut timber with consent of the trustees, or under an order of the Court, even when impeachable for waste (s. 35).
14. To sell heirlooms under an order of the Court (s. 37).

The greater number of these powers were formerly, as a general rule, conferred by the settlement not upon the tenant for life but upon *the trustees*, to be exercised by them with his consent; and it should be mentioned that where such powers exist, they are not affected by this Act (s. 56). Several sets of powers may therefore subsist concurrently for effecting the same objects; but in no case can they be exercised without the consent of the tenant for life (s. 56).

Former
practice as
to powers.

4.—*Checks for Security of Remaindermen.*

Reference must now be made to the various checks which are imposed in the interest of the remaindermen upon the exercise of the foregoing powers; and they may be conveniently considered under the three heads:

Checks
upon the
tenant for
life.

- (1.) Amount of consideration received.

(2.) Preservation of substituted property.

(3.) Special protection to particular kinds of property.

i. Amount
of con-
sideration.

To guard against an improvident exercise of the powers, it is enacted that the best price, rent, or other consideration must be obtained on every sale, exchange, partition, or lease (ss. 4, 7). The tenant for life, moreover, is declared to be in the position, and to have the duties and liabilities of a trustee for all parties entitled under the settlement (s. 53). Notice of the intended exercise of the powers must be sent to the trustees and their solicitor (s. 45), who may apply to the Court if they are dissatisfied with the proposed action of the tenant for life (s. 44). The remainderman may, if the tenant for life fails in his duty, make him or his estate liable under s. 53, as for a breach of trust; and if he has colluded with the purchaser or lessee, the sale or lease may be set aside as fraudulent, under the general law applicable to such transactions.

ii. Preser-
vation of
property.

The most effectual check imposed by the Act is, that capital money cannot be received by the tenant for life, but must always be paid either to the trustees or into Court (s. 22); and by the same section investments are to be made in the names, or under the control of the trustees. If the capital money is re-invested in land it must be made subject to the settlement in the manner provided by s. 24; and if applied in payment for "authorized improvements" (s. 25), the propriety of the application is secured by requiring a "scheme" to be approved either by the trustees, or by the Court, while the actual expenditure of the money is guaranteed by the certificate of the Land Commissioners, or an approved engineer or surveyor. Lastly, an obligation is imposed upon the tenant for life to maintain, repair, and insure the "improvements," during such time, and for such a sum as the Land Commissioners shall prescribe.

iii. Special
protection.

The principal mansion-house, and the demesnes thereof, and other lands usually occupied therewith, cannot be sold or leased without the consent of the trustees, or an order of the Court (s. 15); and the power of the tenant for life

impeachable for waste to cut and sell timber is similarly restricted (s. 35); while, to enable him to sell heirlooms, an order of the Court must in all cases be obtained (s. 37).

5.—*Trustees of the Settlement.*

The powers and duties of the “trustees of the settlement” form an important part of this Act, and it should be carefully borne in mind that the expression is specially defined by s. 2 (8); and that, unless the trustees fall within the terms of the definition, they are not “trustees of the settlement” within the meaning of this Act, and cannot exercise any of its powers.

The following persons are comprised in the definition:—

- (1.) Trustees with a power of sale of settled land.
- (2.) Trustees with a power of consent to, or approval of the exercise of such a power of sale.
- (3.) The persons *declared by the settlement* to be trustees thereof for purposes of this Act.

It will be observed that there may be trustees who would be commonly spoken of as “trustees of the settlement,” yet who are not comprised in this definition; and a pitfall seems to be thereby dug for the unwary. The receipt of such trustees for capital money paid to them would be waste paper, and their sanction of the acts of the tenant for life completely inoperative. If moneys were invested in their names, a breach of trust would be committed, as serious in its possible consequences, as if they were strangers to the trust; and the tenant for life might, in case of loss, be called upon to refund the money. “The trustees of the settlement” are, it must be remembered, a body created by the statute, and in this respect are analogous to the protectors of a settlement under the Fines and Recoveries Act. The confusion between ordinary trustees and the “trustees of the settlement” might have been avoided if the latter had been named “Protectors of the Settled Land.”

No step can be taken in the exercise of the powers

without properly constituted "trustees of the settlement," for previous notice has always to be given to them of the intention to do so (s. 45).

**Appoint-
ment of
trustees.**

If, therefore, there are no trustees of a settlement within the foregoing definition, the first step to be taken is to apply to the Court under s. 38, for the appointment of trustees. It may be here noticed that the power conferred on the Court by that section seems to imply, that, under no circumstances, can the tenant for life make the appointment without its assistance. See, however, the note to that section.

**Duties of
the trus-
tees.**

The duties of the trustees of the settlement are, to exercise a general supervision over the acts of the tenant for life, and to appeal to the Court if a difference arises between him and them (s. 44); to receive capital moneys (s. 22) and invest them in their own names (s. 21), or apply them according to the direction of the tenant for life, and to see that purchased land is made properly subject to the trusts of the settlement (s. 24).

**Protection
of trustees.**

It should be noticed that clauses are introduced to protect each individual trustee from the consequences of signing receipts for conformity, and from losses not happening through his own wilful default (s. 41); and also to indemnify the trustees as a body in respect both of what they do, and what they leave undone (s. 42). But it is difficult to say how far, in particular cases of negligence, these protecting clauses will be practically effective.

**Powers of
trustees.**

The special powers of the trustees are :

- (1.) To approve of a scheme for the execution of improvements, and to nominate a surveyor or engineer to inspect them (s. 26).
- (2.) To consent to the alienation of the mansion house and park (s. 16), and to the cutting and sale of timber (s. 35).
- (3.) To apportion, between tenant for life and remainderman, purchase money paid for a lease or reversion (s. 34).
- (4.) To give receipts for capital money (s. 40).
- (5.) To exercise on behalf of an infant all the powers of a tenant for life (ss. 59, 60).
- (6.) To reimburse themselves, or pay and discharge out of the trust property, all expenses properly incurred (s. 43).

6.—*The Court.*

One of the main objects of the present Act is to supersede the necessity of applying to the Court under the Settled Estates Act; yet applications to the Court, which may be made either by petition or summons at Chambers, (s. 46) form a conspicuous feature in the scheme of the present Act. Interference of the Court.

It should be premised, that by “the Court” is meant the Chancery Division of the High Court (ss. 2, 46), and that its powers may be exercised, as to land in Lancashire by the Court of Chancery of the County Palatine, and to a limited extent by the County Courts, within their several jurisdictions, s. 46 (10).

The purposes for which application may be made to the Court are :—

- (1.) The variation of a building or mining lease, to suit the circumstances of the district (s. 10).
 - (2.) To sanction the alienation of the principal mansion house or demesne (s. 15).
 - (3.) For directions as to investment of moneys in Court (ss. 22, 32).
 - (4.) To approve a scheme of improvement, and order payment therefor (s. 26).
 - (5.) For directions as to enforcing contracts (s. 31).
 - (6.) As to the application of money paid for a lease or reversion (s. 34).
 - (7.) To sanction the cutting and sale of timber (s. 35).
 - (8.) To approve proceedings for protection or recovery of settled land (s. 36).
 - (9.) To sanction sale of heirlooms (s. 37).
 - (10.) For the appointment of trustees of the settlement (s. 38), or of persons to exercise powers on behalf of infant (s. 60).
 - (11.) To determine differences between tenant for life and trustees (s. 44), or settle questions as to conflict of powers (s. 56).
 - (12.) For the raising of costs, charges, and expenses (ss. 46, 47).
- Applications to the Court.

7.—*The Land Commissioners.*

The Inclosure, Copyhold, and Tithe Commissioners, The Land Commissioners. receive by this Act a new style, and a common seal (s. 48).

Hitherto the same individuals have been commissioners for the three purposes, and have used different styles and seals, according to the jurisdiction which, at the moment, they happened to be exercising. They are now saved the confusion of these *aliases*, and under the title of "The Land Commissioners for England," possess all their previous powers.

Their
duties and
powers.

Their duties under this Act are almost entirely of a ministerial character, in relation to the improvements effected with "capital money" of the settlement (ss. 26, 28), but in the Bill of 1882, their approval of a "scheme" was, in all cases, required before any trust money, whether in Court or in the hands of the trustees, could be applied in the execution of improvements. Some confusion as to the position of the commissioners under the Act has been introduced by a change of apparently trivial importance. The 48th section, which confers upon them general powers with reference to the execution of improvements on settled land, originally formed part of the Conveyancing Bill (see clause 12 of the Bill of 1882), but was transferred to the Settled Land Bill by the Select Committee to which both measures were referred; the result of which was that the phrase "any Act *passed or to be passed*," ceased, in its new collocation, aptly to describe the Act for which the clause was primarily introduced. See note to s. 48, where this subject is further discussed.

The functions which the commissioners may be called on to perform, for their interference is not indispensable, are—

- (1.) *After* the works have been executed wholly or in part, to make a certificate as to the execution thereof, specifying the *amount* which is properly payable in respect thereof, or to approve of an engineer or surveyor to make the like certificate.
- (2.) To prescribe by certificate the period during which the tenant for life is to maintain and repair the works, and the amount in which he is to insure such of them as are of an insurable nature.

- (3.) To receive reports from the tenant for life, which they may require him to make, as to the state of the improvements, executed under the Act.

It must be observed, however, that there will be some difficulty in giving practical effect to the last two provisions, since the "scheme" is not submitted to the commissioners, or filed in their office; and no sufficient machinery is provided for enforcing the observance of any conditions which they may prescribe.

• 8.—*Capital money arising under the Act.*

The exercise of the powers of the Act causes, in a ^{Capital money.} variety of ways to be presently noticed, capital money to be substituted for the settled land, or some part thereof; and it is this facility of conversion, more than anything else, which confers upon this Act a distinctive character. Second only in importance to the large powers of the tenant for life, are the provisions relating to the capital money which takes the place of the settled land. It may be mentioned that it can never be received by the tenant for life, but must in every instance be paid to the trustees of the settlement, or into Court (s. 22), in order that it may be invested or applied in the prescribed manner. This is, as has been already stated, the chief guarantee against the abuse of the powers conferred by the Act; and it would seem in most cases to be amply sufficient for the purpose. The application of the capital money will be dealt with in the next article of this chapter; at present it will be sufficient to enumerate the various sources whence capital money may arise.

The following table will be found convenient by the reader, since the provisions of the Act relating to this subject are scattered at wide intervals through a number of sections. Capital money arises under the Act in the following cases:—

- (1.) Sale of the settled land, or part thereof (s. 3).
- (2.) Enfranchisement (s. 3).

Sources
whence

capital
money
arises.

- (3.) Money paid for equality of exchange or partition (s. 3).
- (4.) Fine taken on the grant of a lease (s. 7 (2)).
- (5.) Proportion of rent set aside under a mining lease (s. 11).
- (6.) Consideration paid on surrender of lease (s. 13).
- (7.) Money raised by mortgage for special purposes (s. 18.).
- (8.) Conversion of securities in which capital money has been invested (s. 22).
- (9.) Consideration paid on variation or rescission of contract (s. 31)
(1) ii.
- (10.) Proportion of proceeds of sale of timber set aside, where tenant for life is impeachable for waste (s. 35).
- (11.) Sale of heirlooms (s. 37).

It may also be observed that money in Court, or in the hands of trustees, which is "liable to be laid out in the purchase of land to be made subject to the settlement," may be invested or applied as "capital money arising under the Act," ss. 82, 83.

9.—*Investment and Application of Capital money.*

Investment
of capital
money.

Capital money being supposed to have arisen in some of the ways which have just been mentioned, the next point to be considered is the manner in which it is to be dealt with. Here again, as in the exercise of the powers of the Act, the tenant for life is placed in a position of authority, so far, at least, as is consistent with the interests of the remaindermen. If the money is in the hands of trustees he may direct the mode in which it is to be invested or applied. If it has been paid into Court, it can of course be dealt with only under an order, which may be obtained either on petition or summons, and on the application either of the tenant for life or the trustees; but it is presumed, that in the absence of special circumstances, the Court will have regard to the wishes of the tenant for life as to the selection of authorized investments.

The twenty-first section prescribes the various modes in which capital money may be invested or applied; and these seem for the most part to fall under the three heads:—

(1.) Investment in specified securities ; (2.) Re-investment in land or some estate or interest in land ; and (3.) Payment for authorized improvements. It may also be paid to a person absolutely entitled, or applied in payment of costs, charges, and expenses, or in any other mode specially authorized by the settlement ; but the three heads above mentioned are those to which it is important to direct attention.

The capital money may be invested on Government or ^{i. Invest-} any other securities authorized by the settlement, or by law (as to which see note to s. 21, *post*) ; or, railway bonds, mortgages, debentures, or debenture stock, where a dividend has, for ten years before the date of investment, been paid on the ordinary stock or shares of the company. An amendment moved in the House of Commons by Mr. Shaw Lefevre to add to this clause, the words, “ or in any debentures or debenture stock, issued under the Local Loans Act, 1875,” was lost on a division, and it may be incidentally mentioned that this was the only division ever taken upon the measure. The personal fund thus substituted for the settled land is not intended as a mere interim investment, but may be retained for any length of time, and cannot be altered without the consent of the tenant for life. It is, however, for all purposes of disposition, transmission, and devolution, to be considered as land, and is to follow the trusts of the settlement (s. 22).

Under the second head are included the discharge of in- ^{ii. Rein-} cumbrances, payment for equality of exchange or partition, vestment. or for enfranchisement, and the purchase of the reversion of settled leaseholds, of freehold land in fee simple, copyholds, long leaseholds, or mines and minerals convenient to be held or worked with the settled land.

A long list of “ authorized improvements ” will be found ^{iii. Im-} in section 25, and the manner in which an application of prove-ments. capital money for these purposes is to be sanctioned is clearly set forth in section 26.

The tenant for life in the first place submits a “ scheme ” for the approval of the trustees, or of the Court. If it is

approved, he executes the works and then obtains payment from the trustees, or out of a fund in Court, by producing satisfactory evidence of their proper execution, and of the amount expended upon them. This evidence may be either the certificate of the Land Commissioners, or of a "competent engineer or able practical surveyor," approved by the Commissioners or the Court, as the case may be, or, when the money is in Court, "such other evidence as the Court thinks sufficient."

10.—*Position of a purchaser under the Act.*

Position of
a pur-
chaser.

It will be found that a purchaser—including in that general term a lessee, mortgagee, or other person who deals with the tenant for life—is as fully protected by this Act as if the transaction were carried out by an absolute owner. If he acts in good faith, a purchaser, as against all parties entitled under the settlement, is to be deemed to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of the Act, s. 54; and he is expressly saved from inquiry as to the giving of the prescribed notices by the tenant for life, s. 45. Again, a statement in a lease or indorsed thereon, signed by the tenant for life, is, in favour of the lessee, conclusive as to any matter of fact or calculation under the Act in relation to the lease, s. 7. Lastly, a mortgagee or other person advancing money is saved by the receipt of the trustees from seeing that the money is wanted for the purposes of the Act, or that no more than is wanted is raised, s. 40.

11.—*Incumbrances.*

Incum-
brances on
settled
land.

The existence of incumbrances on settled land is so common that any scheme which failed to provide for them should be at once pronounced crude and incomplete. In

this Act their existence is recognised, and the rights of incumbrancers scrupulously observed; but this fact renders the application of the Act to incumbered estates a matter of considerable difficulty. The power of sale by a tenant for life stands in this respect on the same footing as the ordinary power in a settlement; the incumbrancers must concur, or they must be paid off, or the purchaser must take, which he is generally unwilling to do, subject to the incumbrances on the property.

Section 5 of the Conveyancing Act, 1881, provides machinery whereby, in certain cases, a sum may be paid into Court to satisfy the charges on the land sold; but this manifestly only meets the cases in which the purchase-money is sufficiently large to cover all demands upon it. It more commonly occurs that a small part is sold, and then the redemption of the charges is out of the question. Difficulty on the sale of a small part. Under the 5th section of the present Act the tenant for life may, with the consent of the incumbrancer, charge the incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold; but this transfer of the charge from the land intended to be sold to another part of the estates implies that the incumbrancer is *sui juris*, and satisfied with the security offered to him in substitution. If he is under disability, or if the incumbrance is the subject of a settlement, this arrangement cannot be carried out.

There is a further provision in s. 24 (5) that land acquired by purchase may be made a substituted security Substituted security. for a charge from which the land sold was released "on the occasion and in order to the completion of a sale, &c." Here, also, it is clear that the owner of the charge must be able and willing to release the land. In the majority of cases the procedure indicated in s. 21 will have to be followed, viz., the conveyance must be made subject to (1) all estates, interests, and charges having priority to the settlement, and (2) all such other, if any, estates, interests, and charges, as have been conveyed or created for securing money actually raised at the date of the deed.

12.—*Limited owners who may exercise the powers.*

Other
limited
owners.

The great body of the Act is concerned only with tenants for life, upon whom it confers, as we have already seen, extensive powers of disposition and management. These powers, however, are by s. 58 vested in other "limited owners," when their estate or interest is "in possession." It is unnecessary here to recapitulate the full list of such "persons who have the powers of a tenant for life," but it may be mentioned that it includes tenants in tail, tenants in fee simple subject to an executory limitation over, defeating their estate *in any event*, tenants for years determinable on life, tenants *pur autre vie*, and persons entitled under a trust or direction for payment of the income of land to them for certain limited periods therein mentioned. Provision is made by ss. 59—62 for various disabilities, and it is probably these enactments which will give rise to the most difficult questions of construction under the Act. They provide for the several cases of infancy, coverture, and lunacy, and a general idea of their provisions may be gathered from the following summary.

i. *Infants.* Whenever an infant is entitled to land, either in fee simple or for a limited estate, the powers of the Act may be exercised on his behalf by the trustees of the settlement, or, if there are none, by persons specially appointed for the purpose by the Court.

ii. *Married women.* If a married woman is entitled for her separate use, either to a life estate or to any other limited interest within the meaning of s. 58, she may, without her husband, exercise all the powers conferred by the Act. But if she is not entitled for her separate use the concurrence of her husband is requisite. It would seem, however, that as a tenant in tail may dispose of the land without a deed enrolled, so she may exercise the power without acknowledgment.

iii. *Lunatics.* Where a tenant for life or other limited owner is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf, on obtaining an order

in lunacy, exercise the powers of a tenant for life under the Act.

It must also be mentioned that when a settlement is made by way of trust for sale, *i.e.*, where the land is vested in trustees upon trust to sell, and the trusts are declared of the proceeds of sale, the person entitled for his life, or any other limited period, to the income of the land until sale, is placed in the position of a tenant for life.

13.—*Effect upon existing Settlements.*

The Act applies to existing as well as to future settle- Existing
ments, and there are several points of practical importance settle-
which require special notice in connection with the ments.
former.

In the first place, it must be carefully observed that i. Position
“the trustees of the settlement” are an artificial body of trustees.
created by this Act, and that the actual trustees under an
existing settlement, where there is not a power of sale, are
not “the trustees of the settlement,” and are incapable of
exercising any of its powers. This point, which is of con-
siderable importance, has been already referred to ; and it
may be observed that the chance of falling into error in this
respect is greater in the case of existing settlements than
where they have been framed in conformity with the Act.

Secondly, it should be remembered, that not only are ii. Powers.
new powers conferred by this Act, but also existing powers
are in some respects paralyzed. No power or trust for sale
can henceforward be exercised without the consent of the
tenant for life (s. 56), unless indeed he happens to be an
infant (ss. 59, 60) ; but if the powers of the settlement
prescribe any further consents or additional conditions, they
must in the exercise of those powers be strictly observed.
The powers of the Act are cumulative, and the existing
powers may still be exercised subject to the one limitation
that the tenant for life must give his consent.

14.—*Effect upon the Settled Estates Act.*

Settled
Estates
Act.

One of the first questions which suggests itself on reading this Act is, why was the Settled Estates Act left unrepealed, since the tenant for life can now do whatever the Court could formerly order? As it is, the repeal is confined to s. 17, which relates to proceedings being sanctioned for the protection of the estate, and which is replaced by a more extensive enactment in the present measure (s. 36).

Perhaps the best reason that can be given for the non-repeal of the previous Act is, that its provisions are not compulsory, and that no one can be injuriously affected by its remaining on the Statute-book; and, although to a great extent superseded by the present measure, there may be cases in which it will be desirable to apply for an order under its provisions.

It must be remembered in the first place, that questions of construction may arise as to what is a "settlement," who is "tenant for life," &c., which would make it undesirable to take a title under the Settled Land Act; whereas under the Settled Estates Act, the decision of the Court would indemnify the purchaser. But, in addition to this reason for resorting occasionally to the Court, it seems to be expedient to adopt the machinery of the Settled Estates Act in the following cases:

Cases in
which the
Settled
Estates
Act may
still be
made use
of.

- (1.) When the assignee of the tenant for life desires that the powers of the Settled Estates Act may be exercised, he may apply by petition under s. 23 of that Act. He is powerless under the present Act.
- (2.) When a tenant for life impeachable for waste wishes to grant mining leases of *open* mines. For in such a case, under the Settled Estates Act, s. 4, only one-fourth of the rent need be set aside as capital, instead of three-fourths, as directed by s. 11 of the present Act.
- (3.) If, on the dedication of part of the estate for streets, roads, squares, gardens, &c., it is desirable to

raise the expenses of doing so by mortgage, application must be made to the Court under s. 21 of the Settled Estates Act, no similar power being here conferred.

- (4.) Leases by a husband of his wife's fee simple estate, not settled to her separate use, and by a tenant in dower may still require to be made under s. 46.

Lastly. It is to be remembered that by the combined effect of the Settled Estates Act, s. 40, and the Conveyancing Act, 1881, s. 70, a purchaser acquires a more perfect title than under this Act. See *Re Hall Dare's Contract*, 30 W. R. 556.

15.—*Exclusion of the Act.*

This chapter may be concluded by a brief reference to the precautions taken for the purpose of preventing the exclusion or evasion of the Act. Much ingenuity will, no doubt, be expended in attempts to deprive the tenant for life of his statutory powers; but the stringency of the enactments to which we are about to refer is so great, that the chances of success appear to be extremely remote.

The restrictive provisions may be divided into two classes, Exclusion of the Act. Two classes of restrictive provisions. *i.e.*, those which prevent the tenant for life from divesting himself of his powers, and those which render abortive any attempt on the part of the settlor to exclude the Act. Under the former head are included the following provisions:

- (1.) The powers are expressly declared to be incapable of assignment or release.
- (2.) They do not pass to an assignee of a tenant for life by an assignment of his estate or interest under the settlement.
- (3.) A contract by a tenant for life not to exercise the powers is void.

Notwithstanding any assignment or contract, the tenant for life may continue to exercise his powers, but in doing

so, the assignee's rights are not to be affected without his consent. The practical result of which will be that, in every case (except the grant of leases), the assignee must concur with the tenant for life in executing the provisions of the Act.

In the second class of restrictive provisions, viz., those which control the caprices of settlors and testators, we find that

- (1.) Any direct prohibition "by way of direction, declaration, or otherwise;"
- (2.) Any limitation, gift, or disposition over of the settled land;
- (3.) Any limitation, gift, or disposition of other property; and
- (4.) The imposition of any condition or forfeiture, are declared to be void "so far as they purport or attempt, or tend, or are intended to have, or would or might have, the effect of prohibiting or preventing the tenant for life from exercising, or of inducing him to abstain from exercising, or of putting him in a position inconsistent with his exercising any power under the Act."

These clauses seem to carry out well the intention of their framers, but even if a loophole be discovered, the broad policy of the measure is manifested so clearly, that no attempt to escape from its provisions is likely to find favour with the courts.

THE
SETTLED LAND ACT, 1882.

CHAPTER XXXVIII.

*An Act for facilitating Sales, Leases, and other dispositions
of Settled Land, and for promoting the execution of Im-
provements thereon.* [10th August, 1882.]

BE it enacted by the Queen's most Excellent Majesty,
by and with the advice and consent of the Lords Spiritual
and Temporal, and Commons, in this present Parliament
assembled, and by the authority of the same, as follows :

I.—PRELIMINARY.

§ 1.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

Short title ;
commence-
ment ;
extent.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

The words, "except where it is otherwise expressed," refer merely to the provisions as to the making of general rules contained in ss. 46, 65.

Commence-
ment of
Act.

Although the operation of the Act is by this section suspended until the 1st January, 1883, yet, since it will be then retrospective, some of its enactments may be adopted by anticipation. The investment clause, for example, may be enlarged, so as to give a wider range than that sanctioned by s. 21 (i.) ; persons may be appointed to be "trustees of the settlement" for the purposes of the Act : s. 2 (8) ; and a "contrary intention" may be expressed within the meaning of ss. 39 (1), 45 (2), 57 (2).

§ 1. More important, however, than these are the numerous omissions which henceforward may be made, in reliance upon the statutory powers. The effect of the Act in this respect is stated in the notes to the forms of settlement, *post*, p. 151.

§ 2.

Definition
of settle-
ment,
tenant for
life, &c.

II.—DEFINITIONS.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for

other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act. § 2.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

- (i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:
- (ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:
- (iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:
- (iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and

§ 2.

include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes :

- (v.) Manor includes lordship, and reputed manor or lordship :
- (vi.) Steward includes deputy steward, or other proper officer, of a manor :
- (vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will :
- (viii.) Securities include stocks, funds, and shares :
- (ix.) Her Majesty's High Court of Justice is referred to as the Court :
- (x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners :
- (xi.) Person includes corporation.

Sect. 2. The definitions in this section of "settlement," "settled land,"
Definitions. "tenant for life," and "trustees of the settlement," are of more than ordinary importance, since the whole scope and operation of the Act hinge upon the meanings given to these expressions.

The tenant for life, who is the donee of the very extensive statutory powers, is defined by reference to the "settled land," which is again itself defined as the subject of a "settlement." It becomes, then, extremely important to ascertain what settlements are comprised in this definition.

It will be found that, setting aside verbal differences, the definition of "settlement" here given differs from that in the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 2, (a) in the following particulars:—

§ 2.

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|---|--|
| <p>(1.) The definition in this Act is expressly retrospective, and includes settlements whenever made.</p> <p>(2.) The words "for the time being" do not occur in the definition in the Settled Estates Act.</p> <p>(3.) The concluding words of that definition, "including any such instruments affecting the estates of any one or more of such persons exclusively," are here omitted, presumably with reference to the provisions of s. 50, <i>post</i>, p. 122.</p> | <p>Sub-s. 1.
"Settlement."</p> <p>Differs from "Settlement" as defined by Settled Estates Act.</p> |
|---|--|

It will be observed that the words "limited to or in trust for any person by way of succession" are common to both definitions, and, accordingly, the cases which have been decided upon these words in the Settled Estates Act, are also authorities upon the construction of the same words occurring in this Act.

Settlements by way of trust for sale are expressly provided for by s. 63, *post*, p. 143, but, even without such a provision, it seems that a limitation of real estate to trustees upon trust for sale and investment constitutes a "settlement," if the trustees have a discretion as to the time of sale, notwithstanding the trusts being declared only of the proceeds of sale: *Re Greene*, 10 Jur. N. S. 1098; *Re Laing's Trusts*, L. R. 1 Eq. 416; *Collett v. Collett*, L. R. 2 Eq. 203; *Dixie v. Dixie*, W. N., 1881, p. 49.

Alternative gifts in fee do not satisfy the words "by way of succession:" *Re Clark*, L. R. 1 Ch. 292. In this case land was devised to an infant in fee, but if he should die under twenty-one without issue, then to another infant in fee; and if he should die under twenty-one without issue, to a third in fee; and it was considered clear that there was no jurisdiction under the Leases and Sales of Settled Estates Act to grant leases of the property. See also, *Re Williams' S. E.*, 20 W. R. 967. A devise to a class, with benefit of survivorship, seems to be sufficient to create a "succession:" *Re Goodwin's S. E.*, 3 Giff. 620; *Re Horn's S. E.*, 29 L. T. Rep. 830; *Collett v. Collett*, *ubi supra*; see, however, *Re Burden's Will*, 5 Jur. N. S. 1378.

(a) The following is the definition of "settlement" in the Settled Estates Act: "The word settlement as used in this Act shall signify any Act of Parliament, deed, agreement, copy of Court roll, will or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure, or any estates or interests in any such hereditaments, stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively."

§ 2.

It is not necessary that the person to take in succession should be ascertained at the time of the application. Thus where a freehold estate was limited in trust for a married woman during her life, for her separate use without power of anticipation, and, subject to a power of appointment by will, in trust for the person whom she should leave her heir at law in fee, it was held that an order for sale might be made, although the heir could not be ascertained in the lifetime of his ancestor : *Beioley v. Carter*, L. R. 4 Ch. 230.

Covenant
to surren-
der.

It may be doubted whether a covenant to surrender copyholds to the same uses as were declared of freehold estates would of itself create a settlement of those lands within the meaning of this definition, for they are not thereby "limited to or in trust" for any persons; and the same remark applies to an "agreement for a settlement" not perfected by the execution of a deed.

"For the
time
being."

The object of introducing the words "for the time being" as a qualification of the words "stands limited to or in trust for any persons by way of succession," seems to be threefold—(1) to show that the settlement must be a subsisting one at the date of the exercise of the powers; (2) to include the case of a settlement of money liable to be laid out in the purchase of land, when it is in fact so invested, and (3) to preclude any question as to whether land purchased with capital money under this Act is "limited" by the settlement, or not. The case of personalty invested in breach of trust in the purchase of land would probably not be held to be included. See *Re Durrant & Stoner*, 18 Ch. D. 106.

Sub-s. 2.
Remainder
or rever-
sion.

This sub-section is, with verbal alterations, copied from the enactment in the second section of the Settled Estates Act. It seems to be intended to meet the case of remote outstanding interests, and has no application where there is no settlement, *i.e.*, a limitation by way of succession, independently of the remainder or reversion. To put a simple case, a testator devises an estate to A. for life, and dies intestate as to the reversion in fee. After the death of the testator this is not a settled estate, and A. cannot exercise the powers of the Act, because the will did not limit the estate to any persons by way of succession, and was not therefore a "settlement" which failed to dispose of the reversion. It may, however, be urged that, although not strictly included in the words of the clause, the case which has been supposed is so manifestly within the purview of the Act, that the "general intention" ought to be allowed to prevail.

Sub-s. 3.
Settled
land.

"Settled land" is an expression which constantly occurs throughout the Act, and it is of paramount importance to understand its precise meaning. If the fee simple is settled, the "settled land" comprises the fee; but if only a partial interest, as a term of years, or a mortgage, is comprised in the settlement, then only that particular interest will be included in the expression. Some obscurity arises

from the use of the word "land" in two senses, namely, in its popular and physical meaning of fields that may be drained or built upon, and also in the legal sense of the estate which the owner holds in the land. § 2.

It was decided in *Re Birtles' S. E.*, 11 W. R. 739, on the construction of the Leases and Sales of Settled Estates Act, that the time for ascertaining whether the estate was a "settled estate" or not, was the date of the application to the Court; and in *re Goodwin's S. E.*, 3 Giff. 620, that the question was to be determined by the state of facts existing at the date of the will, and not either at the death of the testator, or the date of the application. By the Amendment Act of 1864 (27 & 28 Vict. c. 45), s. 3, both these decisions were over-ruled, and "the time of the settlement taking effect" was adopted as the period which the Court should regard in order to determine what was a "settled estate" within the Act. This enactment is repeated in sub-s. 4 of this Act; still, having regard to the words "for the time being" in the definition of "settlement," it seems that the land must be "settled" not only when the settlement takes effect, but also at the time when the powers are exercised. Sub-s. 4.
Determina-
tion of
what is
settled
land.

The extensive powers of the Act are conferred upon the tenant for life, who is here defined as "the person for the time being under a settlement beneficially entitled to possession of settled land for his life." Sub-s. 5.
Tenant for
life.

This definition includes both a legal tenant for life, and a person entitled to the equitable interest where, according to the doctrines of Courts of Equity, he would be entitled to be placed in the actual possession or receipt of the rents and profits of the settled land. See the definition of "possession" in sub-s. 10, *ante*, p. 23.

"In equity, if the trustees have a bare legal estate, without active duties, the *cestui que trust* is entitled to be let into possession; but where there are active duties annexed to the trust, it is by no means of course to divest a trustee of the management of the trust property, and to deliver the possession to the *cestui que trust* for life": Dav. Conv. iii. 307, 3rd ed. See as to the circumstances under which a tenant for life is entitled to the possession of the land: *Tidd v. Lister*, 5 Mad. 429; *Baylies v. Baylies*, 1 Coll. 537; *Sidney v. Wilmer*, 4 D. J. & S. 84; *Taylor v. Taylor*, 20 Eq. 297; 1 Ch. D. 426; 3 Ch. D. 145.

It must also be borne in mind that this definition of "tenant for life" is much enlarged by the subsequent provisions contained in ss. 58, 63, *post*, to the notes on which the reader is referred.

If one of several tenants for life refuses to concur in the exercise of the powers conferred by the Act, his co-owners have no means of compelling him to join, however unreasonable his refusal may be. See *Camden v. Murray*, 16 Ch. D. 161. Sub-s. 6.
Persons
jointly en-
titled as
tenants for
life.

§ 2.

Sub-s. 7.
Incum-
brances on
life estate.

This sub-section, which is a modification of s. 54 of the Settled Estates Act, is extended still further by s. 50, *post*, p. 122, which provides that even after an assignment of his interest the tenant for life may still exercise all the powers of the Act; but a saving clause is introduced precluding him from exercising those powers to the prejudice of his incumbrancers. It will be observed that this clause deals not only with incumbrances on the life estate, but also with those on the *corpus*. See as to the position of incumbrancers under this Act, *ante*, p. 14; and on the general subject of the effect of incumbrances upon the exercise of powers: Sugden on Powers, 57, 895, 8th ed.; Dav. Conv. iii. 481, 3rd ed.; and the notes to *Edwards v. Slater*, in Tudor's L. C. on Conv. 376, 3rd ed.

Sub-s. 8.
Trustees of
the settle-
ment.

The trustees of the settlement are intended to act as a check upon the tenant for life, in the exercise of those powers which more materially affect the inheritance of the estate. With the powers of leasing (ss. 6—9), accepting surrenders (s. 13), and granting licences to copyholders (s. 14), they have, in general, nothing to do beyond receiving formal notice under s. 45. The tenant for life may, in like manner, without their concurrence, transfer an incumbrance from one part of the estate to another (s. 5), and dedicate part of the settled land for streets and open spaces (s. 16). But when capital money "arises under the Act" (as to which see *ante*, p. 11), it must, if not paid into Court, be received by the trustees for the purpose of investment in accordance with the provisions of the Act (ss. 21—24). Thus, for example, when it is intended to exercise the power of sale conferred by s. 3, the trustees of the settlement are, in general, necessary parties to the transaction; and so, in like manner, where money is raised for enfranchisement, or for equality of exchange or partition (s. 18). They must also, unless their office in this particular is assumed by the Court, be consenting parties to any alienation of the principal mansion house (s. 15), and to the sale of timber by a tenant for life impeachable for waste (s. 35).

See further as to the powers and duties of the trustees of the settlement, *ante*, p. 7; and as to the appointment of such trustees, s. 38, *post*, p. 106.

It is important to remember that the ordinary trustees under a will, even if they take the legal estate, and are charged with active duties, do not, in the absence of a power of sale, possess any powers under the Act, not being "trustees of the settlement" within the meaning of this definition.

Sub-s. 9.
Capital
money
arising
under the
Act.

On the subject of "capital money arising under this Act," the following references may be convenient:—

- (1.) As to the sources whence it may arise, see s. 3 (sale, &c.); s. 7 (fine paid on the grant of a lease); s. 11 (proportion of mining rent); s. 13 (surrender of lease); s. 18 (mortgage);

s. 13, (1) (consideration for abandoned contract); s. 35 (proportion of proceeds of sale of timber when tenant for life is impeachable for waste); and s. 37 (sale of heirlooms). § 2.

(2.) As to investment and application, see ss. 21, 25, 63 (2).

(3.) As to the receipt of capital money by the trustees of the settlement, see ss. 22, 39, 40.

(4.) As to payment into Court, see ss. 22, 46 (2); and

(5.) As to payment of costs thereout, see s. 47.

The definitions furnished by sub-s. 10 may be usefully compared with those contained in the Conveyancing Act, 1881, s. 2. Sub-s. 10.
i. Land.

"Land," the primary meaning of which is "any ground, soil, or earth" (Co. Litt. 4 a), is here extended so as to include "incorporeal hereditaments," and an undivided share in land. Thus reversions, remainders, and other future estates, advowsons, rent-charges, easements, and other rights over or in relation to land, fall within the meaning of the term.

It will be found, however, that many of the provisions of this Act are inapplicable to "land" in this extended sense, and must be confined by the context to corporeal hereditaments. See, for example, s. 21, vii., which authorises the investment of capital money in the purchase of certain descriptions of land, and s. 24, which directs how the purchased land is to be made subject to the settlement.

"Rent," as the term is employed in this Act, is, except in s. 21 (ii.), the rent payable by a lessee. See as to the reservation of the "best rent" s. 7 (2), of a "peppercorn or other nominal rent" for the first five years of a building term, s. 8 (2), and as to the manner in which rent may be ascertained in a mining lease, s. 9. It is with special reference to this last case that the terms "toll, duty, and royalty" are here included in the meaning of "rent;" and they may be defined, for the purposes of this Act, in the following terms:—
"Toll" is the rent payable for a way-leave, *e.g.*, a certain sum per ton for all the minerals carried over a certain road, or brought to bank from another mine through the demised premises. "Duty" is the proportion of the ore delivered to the lessor, a form of reservation not uncommon in the case of metalliferous mines. "Royalty" is a rent varying with the quantity of the minerals extracted. ii. Rent.

As to the meaning of "building lease" see note to s. 8, *post*, p. 47. iii. Building lease.

The actual stratum of mineral substance forms, as a general rule, part of the inheritance of the land under which it lies, *cujus est solum ejus est usque ad inferos*; but "the mines are a distinct possession, and may be different inheritances:" *Rich v. Cullen*, 1142. iv. Mines and minerals.
See Errington v. Metropolitan District Railway Co., 19 Ch. D. 559.

The importance of the distinction between mines which have been opened and those which have not, arises from the tenant for life impeachable for waste being permitted to continue the working of

§ 2. those which have been opened, while he commits waste by opening fresh mines, or digging new pits : *Viner v. Vaughan*, 2 Beav. 466, and see note to s. 11, *post*, p. 52.

The primary meaning of the word "mine" is an underground excavation, made for the purpose of getting minerals, but it is commonly used as including the stratum of minerals as well as the excavation made to win it : *Midland Railway Co. v. Haunchwood Brick and Tile Co.*, 20 Ch. D. 552. "Minerals," on the other hand, includes, as a general rule, every substance which can be got from underneath the surface of the earth for the purpose of profit : *Hext v. Gill*, L. R. 7 Ch. 699, where china clay was held to be included in the reservation of mines and minerals. For examples of particular substances being decided to be minerals, see *Duchess of Cleveland v. Meyrick*, 16 W. R. 104 (slate in a quarry); *Bell v. Wilson*, L. R. 1 Ch. 303 (freestone); *Midland Railway Co. v. Checkley*, L. R. 4 Eq. 19 ("gravel, marble, fireclay, and every species of stone, whether marble, limestone, or ironstone"); *Attorney-General v. Tomlins*, 5 Ch. D. 750 (coprolites); *Tucker v. Linger*, 30 W. R. 578 (surface-flints).

What are minerals. It must be noticed that whereas "mines and minerals" are expressly made to include substances "in, on, or under" the land, the expression "mining purposes" is defined with reference only to "mines and minerals in or under" the settled land. Notwithstanding the omission of the word "on" it seems clear that "mining purposes" must be held to include the surface working of minerals, for example, the erection of buildings for the manufacture of china clay. See *Midland Railway Co. v. Checkley*, *ubi supra*, where the words "within or under" received an extensive interpretation.

Mining purposes. As to the rights conferred by a mining licence, see *Carr v. Benson*, L. R. 3 Ch. 524.

Mining licence. Lands and seigniories, anciently united, constitute a manor : Burton's Compendium (1023). A manor cannot exist without a Court baron, nor a Court baron without at least two free suitors: Gilbert on Tenures, vol. 2, 431. The prescriptive or customary rights, however, are not in general lost by the legal extinction of the manor, which is then said to subsist by *reputation*. A reputed manor, therefore, may arise either by the severance of the services from the demesnes, or from the right to hold a Court baron being lost : See Coke, Cop., s. 31. "Lordship" is often used as equivalent to manor, but it is more properly applied to the seigniorial rights of the lord, *i.e.*, the rents and services of the freehold tenants, without the demesnes which were formerly annexed to them. See further, Cru. Dig. vol. i. 3, 293 ; Scriven, p. 3, *et seq.*, 6th ed.

vi. Manor, lordship. The word "manor" occurs only in ss. 3 (ii.) ; 14 (1), and 20 (3).

vi. Steward. As to the steward of a manor, who is only mentioned in ss. 14 and

20, see *Scriven*, p. 341, 6th ed. ; and as to the deputy steward, *ibid*, § 2.
p. 349.

This definition of will includes a testamentary appointment by a *vil.* Will. married woman under a power, which, it may be observed, is not entitled to probate : *Re Tomlinson*, 6 P. D. 209 ; *secus*, if there are arrears of rent to which she was entitled for her separate use : *Brownrigg v. Pike*, 7 P. D. 61.

As to the exercise of a power by a "writing in the nature of a will," see *Collard v. Sampson*, 4 D. M. & G. 224 ; *Sug. on Powers*, 218, 8th ed.

The word "will" occurs only in the definition of "settlement," *ante*, p. 22, and in ss. 51, 63.

As to "securities," see s. 21, relating to investment of capital *viii.* Se-money ; s. 22 (5) under which they retain the character of land ; *curities.* and ss. 40, 41, as to the receipts and protection of trustees.

By s. 46 (8) the Court of Chancery of the County Palatine of Lan- *ix.* The-
caster has concurrent jurisdiction as regards land within that county ; *Court.*
and by s. 46 (10) the County Courts are likewise entrusted with a
limited jurisdiction under the Act.

For the meaning of "the Court" in Ireland, see s. 65, *post* ; and as to the cases in which application may or must be made to the Court, *ante*, p. 9.

For the constitution of the "Land Commissioners," see s. 48, and *x.* Land
for their powers generally under the Act, *ante*, pp. 9—11. *Commis-*
sioners.

III.—SALE ; ENFRANCHISEMENT ; EXCHANGE ; PARTITION.

§ 3.

General Powers and Regulations.

3. A tenant for life—

- (i.) May sell the settled land, or any part thereof, or Powers to
tenant for
life to sell,
&c.
any easement, right, or privilege of any kind, &c.
over or in relation to the same ; and
- (ii.) Where the settlement comprises a manor,—may
sell the seignory of any freehold land within
the manor, or the freehold and inheritance of
any copyhold or customary land, parcel of the
manor, with or without any exception or reser-
vation of all or any mines or minerals, or of
any rights or powers relative to mining pur-

§ 3.

poses, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Sect. 3.
Power of
sale.

The tenant for life is placed by this section, so far as the power of selling is concerned, very nearly in the position of an absolute owner; but it may be observed that by the exercise of the power nothing is withdrawn from the settlement; there is, as under the ordinary power of sale, “merely a change of title and not a destruction of interest. In point of fact, such a power enables the alienation of property without affecting the interests of the person beneficially entitled:” Sugden on Powers, 848, 8th ed. The purchase-money can, under no circumstances, be paid into the hands of the tenant for life (see s. 22), and this constitutes the most effectual safeguard provided by the Act against the abuse of its powers. Notice of the intention to sell must also be given to the trustees of the settlement and their solicitor, as provided by s. 45, *post*, who may bring the matter before the Court if they dissent from the proposed exercise of the power (s. 44). The giving of notice is not, it seems, a condition precedent to the exercise of the power, for a *bond fide* purchaser is expressly exempted from inquiry as to such notice: s. 45 (3). The principal mansion house and the demesnes thereof, and other lands usually occupied therewith, cannot be sold under this section without the consent of the trustees, or an order of the Court (s. 15).

Matters
connected
with power
of sale.

See, as to the power of the tenant for life to deal with incumbrances, s. 5; to enter into preliminary contracts, s. 31; and to complete the sale by conveyance, s. 20; as to the payment of the purchase-money, s. 22; as to the appointment, receipts, and protection of trustees, ss. 38-42; and as to the investment or application by them of the money coming to their hands, s. 21, 25, *post*, p. 131.

For the definition of “tenant for life,” see s. 2 (7), and for the enumeration of other “limited owners” who may exercise the powers of a tenant for life, s. 58, *post*, p. 131.

What may
be sold.

It will be observed that the “settled land,” which the tenant for

life is hereby empowered to sell, does not necessarily include the fee simple, but is limited by s. 2 (3) to the estate or interest which is the subject of a settlement. Thus it is the actual interest comprised in the settlement, and no more, which the tenant for life may sell. § 3.

"Land," by s. 2 (10), includes incorporeal hereditaments; and, although many of the provisions of the Act are applicable only to land in its primary sense, yet there seems no reason to doubt that an incorporeal hereditament, like an advowson, may be sold under this section. Where a reversion is sold under this Act, the purchase-money may be dealt with under s. 34, *post*. Under the ordinary power of sale a tenant for life in such case accelerates his possession: Sugden on Powers, 842, 8th ed., and see *Clark v. Seymour*, 7 Sim. 67.

Easements are also included in the expression, "incorporeal hereditaments," and a right of way appurtenant to the settled land may accordingly be sold with the land to which it is appurtenant. A distinction must be pointed out between such easements and those referred to in sub-s. 1. The case contemplated by that sub-section is the creation of an easement *de novo*, not the sale of one already in existence. The tenant for life may, for example, grant for a money consideration, a right of way over the settled land, either to an adjoining owner, or to a purchaser of some other part of the property. See s. 20, *post*, which refers to the conveyance of the land sold, and enables the tenant for life to "convey or create" easements or other rights or privileges in the manner there described.

No power is here conferred of apportioning rents where the land sold comprises part of one or more tenancies. See *Dav. Conv.* ii. part i. 371, 4th ed.

This sub-section is intended to supply the place of the ordinary power of enfranchisement, and enables the tenant for life to act as if he were the owner of the fee simple. The enfranchisement money, however, being "capital money arising under the Act," must, as in the case of a sale under sub-s. i., be paid either to the trustees or into Court, as provided by s. 22, *post*. Sub-s. ii.
Manor.

It is to be observed that the power extends to the sale of the seignior of freehold land within the manor; and, *semble*, this sale must be made to the freehold tenant, and not to a stranger, for the words "so as in every such case to effect an enfranchisement," seem to apply to this case as well as to the enfranchisement, properly so called, of copyhold or customary land. See the Copyhold Act, 1858 (21 & 22 Vict. c. 94), s. 7, which provides for the compulsory extinguishment of the heriot custom payable in some manors by tenants of freehold and customary freehold lands; "and the enfranchisement of the lands subject thereto in the same way as if such lands were copyhold."

"An enfranchisement under a power operates as an appointment

§ 3. of the fee of the tenement enfranchised to the copyholder, so as by the union of the freehold and copyhold interests to extinguish the latter and convert the tenure into freehold :” Dav. Conv. iii. 544, 3rd ed.

The form of conveyance prescribed by s. 20, *post*, seems to provide for the case of an enfranchisement only so far as it is a conveyance of the freehold. The release of the lord’s seigniorial rights over freehold land within the manor, does not seem to be provided for by that section.

It must be remembered that under the Copyhold Acts (a), the lord and the tenant, whatever may be their respective estates and interests, may agree for the enfranchisement of the lands in consideration of a gross sum, of a fixed or variable rent-charge, of lands, mines, or minerals, whether parcel of the manor or not, or of any right to waste in lands belonging to the manor ; and, although there is in this section no express direction as to how the consideration is to be paid, all or any of these modes of payment may possibly be held to be included in the expression “ best price :” s. 4 (1).

Where the lord of the manor has a limited interest, any gross sum of money paid for enfranchisement, under the Copyhold Acts, is to be applied in the manner directed by 4 & 5 Vict. c. 35, ss. 73-75. The purchase-money under this Act may be applied in a greater variety of ways than under the former ; and when, for example, it is desired to employ the money in land improvement, the sale must be made under this section, and not under the Copyhold Acts. Money required for enfranchisement may be raised by mortgage, under s. 18, *post*, p. 65.

For further information as to the power of enfranchisement, see Dav. Conv. ii., pt. i. 386, 4th ed. ; iii. 544, 3rd ed. ; and as to enfranchisement under the Statutes, Cooke on the Copyhold Acts, and Scriven, cap. x., 6th ed.

Mines.

Although much importance cannot be attributed to the change of expression, it should be noticed that “ mines or minerals,” is here used instead of “ mines and minerals,” which is the subject of special definition in s. 2 (10), iv.

As to the relative rights of the lord and the copyholder in respect of trees and minerals, see *Eardley v. Granville*, 3 Ch. D. 826 ; from which it appears, that in an ordinary copyhold manor, the property in mines and trees remains in the lord ; but that after the minerals have been removed, the vacant space (the right to which is occasionally of considerable value in mining districts) belongs to the copyholder.

Sub-s. iii.
Power of
exchange.

If money has to be paid with the settled land for equality of

(a) 4 & 5 Vict. c. 35 ; 6 & 7 Vict. c. 23 ; 7 & 8 Vict. c. 55 ; 15 & 16 Vict. c. 51 ; 21 & 22 Vict. c. 94.

exchange, it must be raised by mortgage under s. 18, *post*; if on the other hand the equality money is paid by the other party the transaction partakes of the nature of a sale (*Bartram v. Whichcote*, 6 Sim. 86), and the money received is "capital money arising under the Act." It must therefore be paid to the trustees, or into Court under s. 22. § 3.

If the consideration given for equality exceeds in amount or value the sum of one hundred pounds, the principal or only instrument is chargeable with *ad valorem* duty as a conveyance on sale for the same consideration; and in any other case with a duty of ten shillings. See The Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 94. Stamp duty.

Incorporeal hereditaments, and an undivided share in land are, by virtue of s. 2(10), included in this power; and, by s. 17, the "mines and minerals" may be treated as distinct from the surface beneath which they lie, and dealt with accordingly. What may be given in exchange.

The restriction in s. 15, *post*, as to the mansion house and park, is not extended to the power of exchange; as to which, see note on that section.

It will be observed that the power is unrestricted as to the tenure of the land taken in exchange. Freeholds may, therefore, be exchanged for copyholds, or *vice versâ*; and lands held in common socage for gavelkind land (see *Minet v. Leman*, 20 Beav. 269; 7 D. M. & G. 340); but there is no express power to exchange freeholds for leaseholds. The power of exchange, however, must be read with the provisions of the Act as to re-investment of the proceeds of sale; for an exchange may be regarded as a sale and re-investment carried out by one transaction. By s. 21 capital money may be invested in long leaseholds, and it would be a narrow construction to place upon the words of this section, to hold that leaseholds were excluded from the power of exchange. See also s. 24, which provides for the settlement of "leasehold land" acquired by purchase, or in exchange, or on partition. What may be taken in exchange.

"The Acts for the inclosure, exchange, and improvement of lands (b), provide a method of effecting exchanges of corporeal and incorporeal hereditaments, which, as it is very simple and inexpensive, and is applicable to estates of every tenure, and whether in settlement, mortgage, or otherwise, is very largely practised at the present day." *Exchanges under Inclosure Acts.* Dav. Conv. ii., pt. i. 94, 4th ed. See also Brickdale on the Leases and Sales of Settled Estates Act, p. 37.

The power of making partition here conferred is more extensive than the ordinary power, which is confined to the case of an un-

Sub-s. iv.
Partition.

(b) 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c. 43.

§ 3. divided share being comprised in the settlement. Here the power includes that case, and also that of land originally settled *in globo*, coming to be held in undivided shares under the provisions of the settlement itself. If, for example, there is a devise to A. for life, and after his decease for his children as tenants in common for life with remainders over, the children of A. may after his decease concur in the partition of the property.

In *Re Frith and Osborne*, 3 Ch. D. 618, it has been held, "removing the doubts of conveyancers" on the subject, that the ordinary power of sale and exchange authorizes a partition.

Partition
by agree-
ment.

It may be observed that this power is confined to partition by agreement among all the owners of the partible shares, and does not confer upon a limited owner any right of *compelling* partition which he did not possess before the Act. It has been held that the Court has no jurisdiction to anticipate the term fixed by a will for the sale of the entire property : *Swaine v. Denby*, 14 Ch. D. 326 ; or to direct a sale or partition as long as there are powers or trusts overriding the partible shares : *Taylor v. Grange*, 15 Ch. D. 165 ; *Biggs v. Peacock*, 20 Ch. D. 200 ; see, however, *Waite v. Bingley*, 30 W. R. 698 ; and the decisions of these cases do not seem to be affected by the present enactment. For the practice under the Partition Acts (31 & 32 Vict. c. 40 ; 39 & 40 Vict. c. 17), see Seton, 1012, 4th ed., and notes to *Agar v. Fairfax*, in Tudor's L. C. in Equity, vol. ii. 419, 5th ed. ; and as to the form of partition deeds, Dav. Conv. v., pt. ii. pp. 1—74, 3rd ed.

Under the
Inclosure
Acts.

Partition may also be made under the Acts for the inclosure, exchange, and improvement of land (*ante*, p. 35) ; which, however, do not authorize the payment of a gross sum for equality of partition ; the only provision on the subject being, that a deficiency in any share not exceeding one-eighth of its value may be compensated by a perpetual rent-charge issuing out of the other shares : 20 & 21 Vict. c. 31, ss. 7, 8.

References
to inci-
dental pro-
visions.

The several powers conferred by this section are affected in various ways by almost all the subsequent provisions of the Act, but the special attention of the reader may be usefully directed to the following table of references :—

1. Transfer of incumbrances, s. 5.
2. Separate dealing with surface and minerals, s. 17.
3. Raising money by mortgage for enfranchisement or equality of exchange or partition, s. 18.
4. Conveyance under the statutory power, s. 20.
5. Investment of capital money, s. 21.
6. Settlement of land acquired, s. 24.
7. Preliminary contracts, s. 31.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained. § 4.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

The tenant for life being by s. 53, *post*, placed in the position of a trustee for all parties entitled under the settlement, the rules which govern sales, &c., by persons in a fiduciary position would seem to apply to the exercise of the powers under this Act, as to which, see *Dart. V. & P. 52 et seq.*, 5th ed. The most important of those rules, however, are in this section expressly enacted.

By Part I. of Lord Cranworth's Act (23 & 24 Vict. c. 145), repealed by s. 64, *post*, powers similar to those contained in sub-ss. 3, 4, and 5, are conferred upon trustees having a power of sale. See also the Conv. Act, 1881, s. 35.

Regulations respecting sale, enfranchisement, exchange, and partition.

§ 4.
Sub-ss.
1, 2.
"Best
price."

The "best price" depends of course on the circumstances of each particular case; but it is certain that if fiduciary vendors fail in reasonable diligence—if they contract under circumstances of haste and improvidence—if they make the sale with a view to advance the particular purposes of one party at the expense of another, the Court will not enforce specific performance of the contract: *Ord v. Noel*, 5 Mad. 438.

Where the sale is made by the tenant for life, as under this Act, there seems to be no reason to scrutinize closely the amount of the purchase-money, since his interests are, in that respect, coincident with those of the remaindermen. Still he must "use all reasonable diligence—as if the estate were his own, to obtain a fair price; and therefore should ascertain its value, even at the expense of a valuation, where circumstances seem to render such a course expedient." Dart. V. & P. 79, 5th ed.

The price ought not to be left to the determination of valuers (*Ibid.*); nor is the tenant for life justified in granting an option to purchase at a future time for a fixed price: *Clay v. Rufford*, 5 De G. & Sm. 768, 780; *Oceanic Steam Navigation Co. v. Sutherland*, 16 Ch. D. 236.

The price should consist of a gross sum, and not a rent-charge: *Read v. Shaw*, Sug. on Powers, 953, 8th ed. See however 23 & 24 Vict. c. 106, which enables limited owners, in sales under the Lands Clauses Consolidation Act, to sell in consideration of an annual rent-charge. See also Sug. on Powers, 864.

Inter-
change of
settled
estates.

There seems to be no reason to prevent capital money arising under one settlement from being employed in the purchase of settled land comprised in another; and it would seem that two "limited owners" may exchange parts of their respective estates.

Semble, notwithstanding *Ferrand v. Wilson*, 4 Hare, 344, 385, inadequacy of price would not, under this Act, prevent the power from being legally exercised, so as to pass the legal estate under s. 20, *post*, the purchaser being protected by s. 54 if dealing in good faith.

Even if the tenant for life is unimpeachable for waste, the timber must be sold with the land: *Cholmeley v. Paxton*, 3 Bing. 207; *Cockerell v. Cholmeley*, 1 R. & M. 418; Sugden on Powers, 864, 8th ed. Express authority is given by s. 17 in the case of an undivided share, to concur with the owners of the other shares in the sale of the property as a whole, but there is no power to sell jointly with the owner of an adjoining property: *Rede v. Oakes*, 4 D. J. & S. 505; *Tolson v. Sheard*, 5 Ch. D. 19, or with the owner of a beneficial lease, or reversion, unless such a sale is advantageous and the purchase-money is apportioned before completion: *In re Cooper and Allen's Contract*, 4 Ch. D. 802; and see as to the application of the purchase-money in the case of a lease or reversion, s. 34, *post*, p. 102.

Sub-sections 3—5, which prescribe the manner in which the sale is to be made, merely express the general law as to sales by fiduciary vendors. Trustees were formerly not justified in buying in at an auction : *Taylor v. Tabrum*, 6 Sim. 281 ; *Lewin*, 397, 7th ed. ; but they may now do so when s. 35 of the Conv. Act, 1881, applies. The tenant for life under this section seems to have an unfettered discretion as to the conditions of sale, and is not liable to be restrained from employing those which are depreciatory as in *Dance v. Goldingham*, L. R. 8 Ch. 902.

§ 4.
Sub-sa.
3—5.
Manner of
sale.

Sub-section 6 enables a tenant for life to enter into restrictive covenants as to any part of the settled land not disposed of, and also to sell subject to similar covenants on the part of the purchaser.

Sub-s. 6.
Restrictive
covenants,
&c.

It is submitted that the law, as to the extent to which these covenants bind an assignee, is not altered by this section ; the object being to place the tenant for life in the position of an absolute owner for the purposes of sale, &c.

In the leading case of *Tulk v. Moxhay*, 2 Ph. 774, it was decided, that a covenant by a purchaser to use or abstain from using the land in a particular way, will be enforced in equity against all subsequent purchasers with notice, independently of the question whether the covenant runs with the land or not ; but this doctrine has been recently held not to extend to affirmative covenants : *Haywood v. The Brunswick Benefit B. Soc.*, 8 Q. B. D. 403 ; *London and South-Western Ry. Co. v. Gomm*, 20 Ch. D. 562 ; overruling *Cooke v. Chilcott*, 3 Ch. D. 694. The better opinion seems to be, that whether "assigns" are named or not, restrictive covenants do not run with the land so as to bind an assignee without notice : *Dart*, V. & P. 766, 5th ed.

The present sub-section, however, by the use of the words—"binding . . . on the tenant for life, and the settled land"—seems to imply that in some cases, and to some extent, the burthen of these covenants may be made to run with the land. See *Nicoll v. Fenning*, 19 Ch. D. 258.

Constructive notice of the covenant is sufficient to bind an assignee : *Parker v. Whyte*, 1 H. & M. 167 ; *Wilson v. Hart*, L. R. 1 Ch. 463.

Where land is sold on a general building scheme, the restrictive covenants of each purchaser are in the nature of a reservation by the vendor for the benefit of the other purchasers, any one of whom may accordingly enforce the obligation of the covenant : *Western v. Macdermott*, L. R. 2 Ch. 72 ; *Gaskin v. Balls*, 13 Ch. D. 324. But if part of the property is sold to a purchaser with a restrictive covenant, and afterwards the rest is sold without any mention of the covenant, there is in such a case no privity between the two purchasers, and the second has no right to enforce the covenant : *Keates v. Lyon*, L. R. 4 Ch. 218 ; *Master v. Hansard*, 4 Ch. D. 718 ; *Renals v. Cowlishaw*, 11 Ch. D. 866.

Who are
entitled
to benefit
of cove-
nants.

The restrictions or reservations with respect to mines and minerals **Mines.**

§ 4. referred to in this sub-section seem to be of a different character from the rights and easements which may be granted or reserved under s. 17. The latter are intended to enlarge the rights of the person taking the mine, the provisions of the present sub-section on the contrary are pointed to a restriction of the full rights of ownership. For example, upon the sale of mines apart from the surface, the purchaser may, under this section, covenant not to work the mine so as to let down the surface, or the tenant for life may covenant to work adjacent mines so as not to interfere with those which have been sold.

Sub-s. 7.
Re-grant
of com-
mons.

"Rights of common in the waste of the manor are extinguished by enfranchisement, unless they should be specially preserved to the copyholder under terms equivalent to a re-grant : " Scriven, 283, 6th ed. ; *Bradshaw v. Eyr*, Cro. Eliz. 570 ; but it is said that these rights, although legally extinguished, subsist in equity : *Styant v. Staker*, 2 Vern. 250 ; Dav. Conv. ii., pt. i. 388, 4th ed. ; iii. 545, 3rd ed.

Under the Copyhold Acts, the commonable rights are preserved without a re-grant : 15 & 16 Vict. c. 51, s. 45. It would seem that other rights, easements and privileges, appendant or appurtenant to the copyhold, would be affected by enfranchisement in the same way as rights of common. An enfranchisement without a re-grant does not affect, as we have seen, equitable rights of the tenant. The meaning, therefore, of the alternative in this sub-section must be, that the enfranchisement may be effected together with an express extinguishment of the rights of common, &c.

Sub-s. 8.
England
and Wales.

By 20 Geo. II. c. 42, s. 3 (printed in the Revised Edition of the Statutes), the word " England " in an Act of Parliament is to be deemed to include the dominion of Wales and the town of Berwick-upon-Tweed.

This statutory interpretation was not relied upon in Lord Cranworth's Act, 23 & 24 Vict. c. 145, ss. 1, 4, and 6, where the expression " England and Wales " is adopted ; and in a deed it would of course be proper, if such were the intention, to make express mention of the Principality. See the Form of Power, Dav. Conv. iii. 1013, 3rd ed.

There can be no doubt that, having regard to the above-mentioned statute, land in England may be exchanged for land in Wales. See s. 48, *post*, by virtue of which the " Inclosure Commissioners for England and Wales " become the " Land Commissioners for England."

Special Powers.

§ 5. 5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other

Transfer
of incum-
brances on
land sold,

part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly. § 5.

It is to be presumed that the several parts of the "settled land" must, for the purposes of this section, be all subject to the same trusts. If, for example, land were devised to A. for life, and after his death, as to part for B., and as to the rest for C., the whole would be "settled land" of which A. was tenant for life; but it would be manifestly unjust to permit him to affect the rights of the several remaindermen, by shifting a burthen from the land of one to that of the other. Sect. 5.
Transfer
of incum-
brances.

Again, a reasonable limit must be placed on the nature of the incumbrance which may thus be transferred. The words of the section would enable a tenant for life, who had mortgaged his life interest in one part of the property, to sell that part free from the incumbrance, and to charge his personal debt upon the inheritance of any other part of the estate. This would amount to a fraud on the remainderman, and such a case would be held not to be within the power hereby conferred. If, on the other hand, there is a mortgage for a term of years to secure a sum raised for portions, upon the sale of the land affected thereby, the fee simple of any other part of the settled land might be made a substituted security for the money under this section. The power must, it is submitted, be construed by the incidence of the charge. It is to be regarded as a piece of machinery for effecting a sale free from incumbrances, and if the mortgage constitutes a burthen on the inheritance, then whether it is secured by a mortgage in fee, or for a term of years, it may be transferred as provided by this section.

Section 22 provides that capital money arising under the Act is to be considered as land, and it may accordingly be held that under the power in this section, the purchase-money of land sold may be made a substituted security for a mortgage thereon. See s. 24 (4), *post*. It will be observed that no provision is made for the case of the incumbrancer being under disability, or for the incumbrance being subject to the trusts of a settlement. In many cases there will be no person capable of giving his consent under this section, and then the land must be sold subject to the incumbrance, or the machinery of s. 5 of the Conv. Act, 1881, must be adopted. The latter is however inapplicable where the value of the land sold is less than the total amount of the charge which affects it.

- § 5.** An efficacious means of dealing with incumbrances, especially on the sale of small portions of the settled land, might have been supplied by authorizing the tenant for life to charge the residue of the settled land by way of indemnity to the purchaser against any charge affecting the portion sold. For forms of transfer under this section, see *post*, pp. 166, 168.

IV.—LEASES.

General Powers and Regulations.

- § 6.** 6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—
- Power for tenant for life to lease for ordinary or building or mining purposes.**
- (i.) In case of a building lease, ninety-nine years :
 - (ii.) In case of a mining lease, sixty years :
 - (iii.) In case of any other lease, twenty-one years.

Sect. 6. Powers of leasing. The tenant for life under this section takes more extensive powers of granting leases than those conferred upon the Court by the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 4. Under that Act a mining lease can be granted only for a term not exceeding forty, and a repairing lease sixty years. Here, a repairing lease being included in the expression "building lease," s. 2 (10), the authorized terms are sixty and ninety-nine years respectively.

The powers of granting leases for twenty-one years, conferred upon tenants in tail by the Fines and Recoveries Act (3 & 4 Will. 4, c. 74) ss. 15, 41, and upon tenants for life and other limited owners by the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46, are practically superseded by the wider provisions of the present Act.

As to the "limited owners" entitled to exercise the powers of a tenant for life, see s. 58, *post*. Amongst the persons there enumerated, it will be observed that a tenant in dower is not included. If she therefore grants a lease, it must be under the 46th section of the Settled Estates Act above referred to.

Trustees' powers. It is to be observed that any leasing powers which may be vested in trustees are not taken away by this Act, but they cannot henceforward be exercised without the consent of the tenant for life (s. 56). This would also seem to be necessary where general powers of leasing have been vested in trustees, by an order of the Court under s. 13 of the Settled Estates Act. Such an order, however, generally

provides that the powers shall be exercised with the consent of the tenant for life : Seton, 1489 ; *Tolson v. Sheard*, 5 Ch. D. 19. § 6.

The tenant for life cannot by assignment, release or contract, deprive himself of the powers here conferred upon him ; and although he is precluded from exercising them to the prejudice of his assignee, he may, unless the assignee is in possession, grant leases (without fine) as if no assignment had taken place : s. 50, *post*.

On comparing the provisions of this and the next section, with s. 18 of the Conveyancing Act, 1881, it will be noticed that, as against a mortgagee, a tenant for life has actually larger powers of granting leases than a person absolutely entitled to the equity of redemption.

If a tenant for life purports to grant a lease for a longer term than is here authorized, the lease will be good *pro tanto* : *Campbell v. Leach*, Amb. 740 ; Sugden on Powers, 519, 567, 8th ed.

Semble, this section does not enable a tenant for life of copyholds to grant a lease, unless authorized by the licence of the lord, or the custom of the manor. It must be observed that there is no saving clause as to the rights of the lord such as is contained in s. 56 of the Settled Estates Act.

The words "whether involving waste or not," seem to refer to "Whether matters incidental to the main purpose of the lease ; for example, an injury to the surface, by the exercise of mining rights : *Hext v. Gill*, L. R. 7 Ch. 699 ; or the destruction of old houses with a view to building on their site : *Doe v. Earl of Burlington*, 5 B. & Ad. 507 ; *Doherty v. Allman*, 3 A. C. 709 : but it seems that, whether the tenant for life is impeachable for waste or not, the proceeds of sale of building materials must be treated as capital money arising under this Act, and accounted for accordingly : *Morris v. Morris*, 3 De G. & J. 323.

It can scarcely be intended by this section to enable a tenant for life, by granting a lease "without impeachment of waste," to profit by acts of waste for which, if done by himself, he would have been impeachable.

"Where a lease is made without impeachment of waste," equity will not restrain the lessee from cutting timber, ploughing up meadow or pasture, opening mines, or the like ; but he will, if necessary, be restrained from pulling down houses, defacing seats, &c." Woodfall, 585, 12th ed.

It would thus, if such a lease were authorized, be possible for a tenant for life, by granting a short term without "impeachment," to strip the estate of timber and appropriate in the shape of rent the proceeds of sale.

This would be opposed to the general scheme of the Act, which requires three fourths both of mining rent (s. 11), and of proceeds of sale of timber (s. 35), to be set aside as capital when the tenant for life is impeachable for waste.

The rights of the tenant for life, in respect of timber and other

§ 6. trees, are fully discussed by the present Master of the Rolls in *Honywood v. Honynwood*, L. R. 18 Eq. 306.

§ 7.
Regula-
tions re-
specting
leases
generally.

7.—(1.) Every lease shall be by deed; and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Sect. 7.
Regula-
tions re-
specting
leases.

The regulations here laid down differ from the conditions annexed to the ordinary power, by permitting a fine to be taken, and by enabling the tenant for life to sign a conclusive statement respecting any matter of fact or of calculation, under the 5th sub-section.

It would seem that whether the conditions of this section are complied with, or not, the power will be well exercised, and the lease valid, if the lessee is a person dealing in good faith within the meaning of s. 54; the remedy of the remainderman being confined to an action against the tenant for life in respect of a breach of trust. See s. 53. As to the cases in which courts of equity granted relief where the ordinary power of leasing was defectively executed, see Sugden on Powers, 464 *et seq.*, 8th ed.

Relief
against
defective
execution.

By 12 & 13 Vict. c. 26, every lease under a power, which is invalid by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of

such power, will, if made *bond fide*, and the lessee has entered under it, operate as a contract for a lease, subject to any variation which may be necessary to bring it into conformity with the power. See also 13 & 14 Vict. c. 17. § 7.

As to leases in possession, see Sug. on Powers, 749, 8th ed. There is here no power to grant a reversionary lease, except within the last twelve months of the current lease; but the tenant for life may at any time, under s. 13, accept surrenders and make new leases. Sub-s. 1.
In possession.

Whether the "best rent" is reserved or not, is a question for the jury: *Wright v. Smith*, 5 Esp. 203. See also *Roe v. Archbishop of York*, 6 East, 86, where it was held that improvements made by the tenant would not justify a lease at an undervalue. This doctrine is abolished by the present enactment, since it expressly provides that money laid out for the benefit of the settled land may be taken into account in determining the rent: but it is of course to be understood that the improvements must be permanent in their nature, and not such as would be exhausted during the term of the lease. See Sugden on Powers, 779, 8th ed. The tenant for life is not bound to accept the highest offer made to him, "for in the choice of a tenant there are many things to be regarded besides the mere amount of the rent offered:" *Doe v. Radcliffe*, 10 East, 278; *Dyas v. Cruise*, 2 Jo. & Lat. 460. Sub-s. 2.
Best rent.

According to Lord Eldon, the "leading criterion" in these cases is, "whether the man who makes the lease has got as much for others as he has got for himself;" cited Sugden on Powers, 785, 8th ed. See also *Doe v. Bettison*, 12 East, 305.

The value of a lease surrendered under s. 13, *post*, may be taken into account in estimating the rent to be reserved: *Re Rawlins' Estate*, L. R. 1 Eq. 286.

The covenant for payment of rent will, as a general rule, be entered into with the tenant for life; and, whether he has a legal estate or not, the benefit of the covenant will, under s. 10 of the Conv. Act, 1881, be annexed and incident to and go with the reversionary estate in the land. See *Greenaway v. Hart*, 14 C. B. 340; *Yellowly v. Gower*, 11 Exch. 274. Sub-s. 3.
Covenant by lessee.

A maximum limit of thirty days' grace is here substituted for twenty-eight days, the period fixed by the Settled Estates Act, s. 4.

The counterpart is, for many purposes, evidence against the lessee: *Roe v. Davis*, 7 East, 363; *Houghton v. Kenig*, 18 C. B. 235; and where there is a manifest error in the lease, the counterpart may be looked at to correct the mistake: *Burchell v. Clark*, 2 C. P. D. 88. Sub-s. 4.
Counterpart.

The object of sub-s. 5 seems to be to enable the lessee to sell his interest without being subject to inquiry as to compliance with the statutory regulations. Section 54 protects him "as against all parties entitled under the settlement," a "conclusive statement" under this Sub-s. 5.
Statement signed by tenant for life.

- § 7.** sub-section furnishes him with evidence against all the world. The onus lies on the purchaser of a lease of showing that the lease was not duly granted, Conv. Act, 1881, s. 3 (4); and the "statement" which, it is to be observed, must be either contained in, or indorsed upon the lease, thus answers possible requisitions by way of anticipation. The "matter of calculation" here referred to appears to be the determination of the minimum rent, under a building agreement in the manner provided by s. 8 (3); and, of course, cannot refer to "matter of calculation" properly so called, viz., purely arithmetical processes. The conclusive statements signed by the tenant for life may also be advantageously employed, when the lessee wishes to preserve evidence of the fact, that he has erected buildings, or expended a certain amount in repairs, or improvements, in accordance with a previous agreement. See s. 8.

For forms of conclusive statements under this section, see *post*, pp. 185, 186.

Building and Mining Leases.

- § 8.** **8.—(1.)** Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.
- (2.)** A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.
- (3.)** Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—
- (i.)** The annual rent reserved by any lease shall not be less than ten shillings; and
 - (ii.)** The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

Regulations respecting building leases.

- (iii.) The rent reserved by any lease shall not exceed § 8.
 one fifth part of the full annual value of the
 land comprised in that lease with the buildings
 thereon when completed.

No distinction is drawn in this Act as in the Settled Estates Act, Sect. 8. 1877 (40 & 41 Vict. c. 18), s. 4, between a building lease and a repairing lease. The erection of new, and the improvement or repair of existing buildings, are both included in the expression "building purposes," and equally authorize the grant of a lease for a term of ninety-nine years. No additional duty is payable in respect of improvements on, or additions to the demised property: The Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 98; and see 33 & 34 Vict. c. 44, overruling the decision in *Re Bolton's Lease*, L. R. 5 Ex. 82. Regulations as to building leases.

A covenant in a lease to keep existing buildings in repair, or to do all "necessary repairs," is sufficient to constitute a repairing lease: *Easton v. Pratt*, 2 H. & C. 676; *Truscott v. The Diamond Rock Boring Co.*, 20 Ch. D. 251, overruling on this point *Doe v. Withers*, 2 B. & Ad. 896. See also Sugden on Powers, 829, 8th ed.

It is important to observe that a building lease may be granted not only where the lessee covenants to erect buildings, &c., but also in consideration of buildings already erected, improved, or repaired, or of an improvement connected with building purposes (s. 25) having been executed before the grant of the lease.

This provision leaves the *quantum* of consideration extremely vague, and a very slight expenditure of capital on the part of the lessee seems to justify the grant of a building lease. As to the extent of ground which may be included in a building lease, see *Cooper v. Denne*, 4 Bro. C. C. 80; *Higgins v. Rosse*, 3 Bli. 112; and Chance on Powers (2399).

The power of taking a peppercorn or other nominal rent for the first five years of the term was introduced into the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 4, where it was extended to mining leases. Here it is clearly confined to building leases. Sub-s. 2. Peppercorn rent.

It is not uncommon in building contracts to provide that the builder, instead of taking a lease of the premises in his own name, may require leases of the separate houses to be granted direct to his nominees, the rent being apportioned by the architect of the lessor; and this sub-section is probably intended to provide for such a case. See *Cust v. Middleton*, 3 D. F. & J. 33. The object seems to be, to prevent an unequal apportionment of the rent, and to secure a certain outlay upon each plot of ground comprised in a separate lease. If all the land were comprised in a single lease, the lessor, on non-payment of any part of the rent, might re-enter upon any Sub-s. 3. Leases in pursuance of building contract.

§ 8. part of the premises. The effect of sub-division is to diminish this security, and to make each plot liable only for its apportioned rent ; but, so long as the apportionment is made with a due regard to the relative values of the several parts of the property, the arrangement is advantageous to the occupier, without materially affecting the interests of the lessor.

Provisions
to secure
a fair ap-
portion-
ment.

The provisions of this sub-section are somewhat crabbed, but appear to be effective. The first is, of course, intended to prevent excessive sub-division of the rent, whereby the cost of collection would be considerably increased. The second fixes a minimum rent, not for each individual lease, but for the group of leases granted up to any particular date ; so that if more than the "best rent," within the meaning of s. 7 (2), is reserved by the first lease, an equivalent reduction may be made in that reserved by the second ; and similarly as to the third and subsequent leases. The builder is precluded by this clause from disposing of the houses first completed, except upon the terms of a fair ground-rent being reserved to the lessors.

The third clause of this sub-section in effect requires that the letting value of the house, when built, shall be at least five times the amount of the ground rent.

This section does not provide for the apportionment of rent upon the assignment of part of the premises, where the builder, instead of entering into a contract for a lease, takes a lease in his own name in the first instance. As to the power of a tenant for life to enter into preliminary contracts, see s. 31, *post*, p. 96.

§ 9. 9.—(1.) In a mining lease—

Regula-
tions re-
specting
mining
leases.

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf ; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent

specified period, free of rent other than the § 9.
fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

The manner of ascertaining the rent in a mining lease varies with the nature of the mineral, and the district in which the mine is situated. Regulations as to mining leases.

"Rents are generally payable in money in demises of quarries or open workings, and are often so payable for mines. In mines of coal the render is also usually in money, and, in many instances, made to vary with the market price of the article. The rents made payable in respect of metalliferous mines are almost invariably proportioned to the quantity of ore actually raised, and without any stipulated certain rent in money. It is a common practice to stipulate that the rent shall be paid in money, according to the market price of the day, or by delivery of the metals in a manufactured state : " Bainbridge on Mines, 471-2, 4th ed.

Although "rent" is by s. 2 (10) defined so as to include "duty," or a render of rent in kind, it seems doubtful from the language of this in kind. section whether a proportion of the mineral, either in its natural or in its manufactured condition, may be reserved under this Act. See *Campbell v. Leach*, Amb. 740, where ore was said to be "analogous to money ;" and *Basset v. Basset*, *ibid.* 843. A render of mineral in its natural state is an exception and not a reservation, and consequently no distress can be levied for such a rent : Bainbridge, 471, 4th ed. See also s. 11, *post*, which provides that part of the mining rent is to be set aside as "capital money," a provision inapplicable to a payment in kind.

On the other hand it is stated by Lord St. Leonards that "the word *rent*, in powers of leasing, is with great propriety construed to mean not money merely, but any return or equivalent adapted to the nature of the subject demised ; therefore, upon a lease of mines, a due proportion of the produce may be reserved as a render in lieu of money, although the power requires a 'rent' generally to be reserved" : Sugden on Powers, 791, 8th ed. See also Dav. Conv. iii. 489, 3rd ed.

The payment of the fixed rent is, in some districts, made to depend upon the capabilities of the mine, so that if it is worked out, or its productiveness diminished, or accidents occur, the fixed or minimum rent can no longer be exacted. Here, if a fixed or minimum rent is reserved, it must continue to be paid throughout the term whether Minimum rent.

§ 9. the mine can be worked or not : *Marquis of Bute v. Thompson*, 13 M. & W. 487 ; *Clifford v. Watts*, L. R. 5 C. P. 577 ; *Mellers v. Duke of Devonshire*, 16 Beav. 252 ; *Jefferys v. Fairs*, 4 Ch. D. 448.

It is also important to observe that there is no power to remit the "dead rent" during the first years of the term while the minerals are being "won" (see *Lewis v. Fothergill*, L. R. 5 Ch. 103), or to insert a provision that the lessee shall be entitled to determine the lease when the mine is incapable of being worked at a profit. It has, indeed, been recently decided that the latter provision, in the absence of a special custom, is not a usual clause in the lease of a colliery : *Strelley v. Pearson*, 15 Ch. D. 113 ; and see *Gowan v. Christie*, L. R. 2 H. L. Sc. 273.

**Acreeage
rent.**

The "acreage" rent referred to in this section is not, it may be remarked, that payable in respect of the surface ; but is what is commonly called a "footage rent," which is merely a mode of determining the quantity of mineral extracted by a combination of the acreage with the thickness of the seam.

**Outstroke
royalty.**

When a mine, instead of having a separate communication with the surface, is worked through another, an "outstroke royalty" is generally reserved in respect of the minerals brought to bank through the demised mine. This is the meaning of the words "or any other land" in the first sub-section. See *G. W. Ry. Co. v. Rous*, L. R. 4 H. L. 650.

**Facilities
given.**

The rent may also vary with the "facilities given" for the working, &c., of the mines. A surface rent (*Re Reveley*, 11 W. R. 744), and the royalties usually payable in respect of wayleaves are included in this provision. As to facilities given in respect of "any other land," see *G. W. Ry. Co. v. Rous*, *ubi supra* ; *Bidder v. North Staffordshire Ry. Co.*, 4 Q. B. D. 412. Whether the tenant for life can authorize the lessee to "let down," or otherwise injure the surface, on payment of compensation, seems very doubtful. See the leading case of *Rowbotham v. Wilson*, 8 H. L. Cas. 348. As to the injury to the surface caused by mineral workings, see *Aspden v. Seddon*, L. R. 10 Ch. 394 ; 1 Ex. D. 496 ; *Wilson v. Waddell*, 2 A. C. 95 ; *Davis v. Treharne*, 6 A. C. 460 ; and as to the injury to an upper seam by the working of one beneath it : *Mundy v. Duke of Rutland*, 30 W. R. 635.

**Sub-s. 2.
Improve-
ment in
connexion
with
mining
purposes.**

The improvements authorized by the Act are specified in s. 25, *post* ; and those which are connected with mining purposes, appear to be (xiv.) tramways, railways, canals, and docks ; (xv.) jetties, piers, and landing-places for facilitating transport of things required for mining purposes ; and (xix.) trial pits for mines and other preliminary works necessary or proper in connexion with development of mines.

10.—(1.) Where it is shown to the Court with respect § 10.
to the district in which any settled land is situate, Variation
of building
or mining
lease ac-
cording to
circum-
stances of
district.
either—

- (i.) That it is the custom for land therein to be leased
or granted for building or mining purposes for
a longer term or on other conditions than the
term or conditions specified in that behalf in
this Act, or in perpetuity; or
- (ii.) That it is difficult to make leases or grants for
building or mining purposes of land therein,
except for a longer term or on other conditions
than the term and conditions specified in that
behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the
tenant for life to make from time to time leases or grants
of or affecting the settled land in that district, or parts
thereof, for any term or in perpetuity, at fee-farm or other
rents, secured by condition of re-entry, or otherwise, as in
the order of the Court expressed, or may, if it thinks fit,
authorize the tenant for life to make any such lease or
grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any
direction in the order of the Court to the contrary, each of
his successors in title being a tenant for life, or having the
powers of a tenant for life under this Act, may make in any
case, or in the particular case, a lease or grant of or affect-
ing the settled land, or part thereof, in conformity with the
order.

The discretionary power conferred upon the Court by this section Circum-
stances
of the
district.
is somewhat larger than that contained in the 4th section of the
Settled Estates Act, which provides that a lease may be for such term
of years as the Court shall direct, when the Court shall be satisfied
that it is the usual custom of the district and beneficial to the inheri-
tance to grant such a lease for a longer term than the term therein-
before specified in that behalf. Under this Act the variation may be
authorized either in accordance with local custom, or on account of
any particular difficulty affecting the grant of leases in the ordinary
form.

“Custom,” as used in this section, does not mean a custom in the “Custom.”

§ 10. strict legal signification of the word—a usage which has obtained the force of law within a particular district : *Tyson v. Smith*, 9 Ad. & E. 421 ; but manifestly refers to those “ customs of the country ” which express the prevailing habits of the neighbourhood : see *Legh v. Hewitt*, 4 East, 154 ; Cooke’s *Agricultural Tenancies*, ch. iv., 2nd ed.

Under the Settled Estates Act, the Court, upon proof of the custom of the district, has sanctioned building leases for 999 years : *Re Carr*, 9 W. R. 776 ; and 600 years, *Re Cross’s Charity*, 27 Beav. 592, in which case the established custom was shown to be to grant leases for 999 years.

In *Savile v. Bruce*, 29 Beav. 557, an application to Parliament was directed, in order to extend the leasing powers of a settlement, under circumstances which appear to be provided for by the present section.

“ The experience of the Court is that renewable leases are wasteful : ” per Jessel, M. R., in *Re Henry Smith’s Charity*, 20 Ch. D. 516.

As to the local customs prevailing in different mining districts, see Bainbridge on Mines, 929, 4th ed. ; *Strelley v. Pearson*, 15 Ch. D. 113.

Any application under this section may be made either by petition or by summons at chambers, s. 46 (3) ; and by the same section the costs of all parties are left to the discretion of the Court, and would in general be payable out of *corpus*.

For form applicable to this section, see *post*, p. 170.

- **§ 11.** 11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Part of
mining
rent to be
set aside.

Mining
rent.

If the tenant for life makes use of the powers of the Act to grant mining leases, he is by this section put upon terms to capitalize a portion of the annual profits ; and the principle upon which the enactment is founded is, that working mines is not merely reaping the fruit of the land, but is a consumption of the inheritance.

A tenant for life, expressly made unimpeachable for waste, may work for his own profit all the mines and minerals whether they have been already worked or not : but where he is impeachable for waste, he cannot open mines or dig new pits : *Whitfield v. Bewit*,

2 P. Wms. 242. He may, however, continue the working of such as have been opened by the settlor; *Viner v. Vaughan*, 2 Beav. 466; or by a previous tenant in tail: *Clavering v. Clavering*, 2 P. Wms. 388; and he may open new pits or shafts for the purpose of working the old vein (*ibid.*); or a new underlying vein the existence of which was unknown during the testator's lifetime: *Spencer v. Scurr*, 31 Beav. 334; and as to the circumstances under which he may resume the working of a dormant or abandoned mine, see *Bagot v. Bagot*, 32 Beav. 509. § 11.

The Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 4, also Mining makes provision for setting aside a certain portion of the rent reserved on a mining lease granted in pursuance of the Act; but the proportion to be set aside is made to depend upon whether the tenant for life is entitled to work the mines and minerals for his own benefit or not. Thus, if a lease of open mines were granted under the Settled Estates Act, the tenant for life, although impeachable for waste, need only relinquish one-third of the rent, whereas if he exercises the powers of this Act he must set aside three-fourths thereof; for it does not seem possible to read the words in this section, "impeachable for waste in respect of minerals," as equivalent to "impeachable for waste in respect of the minerals," comprised in the lease. rent set aside under the Settled Estates Act.

If the settlement is silent on the subject the tenant for life is impeachable for waste, and if the mines are *open* he is allowed to work them, not because he is unimpeachable for waste in respect of these particular minerals, but because such working is not waste. This circumstance renders it probable that applications will continue to be made under the former Act to sanction leases of open mines.

The rents set aside are "land" in the hands of the trustees, and pass by a gift of the surface: *Re Scarth*, 10 Ch. D. 499. It has been recently held that a lease of salt-works, where the salt was obtained by the evaporation of brine pumped up from a depth of 150 feet, was not within the above-mentioned provision in the Settled Estates Act, and that no part of the rent need be set aside: *Re Dudley's S. E.*, 26 Sol. J. 359.

The lessee may, it is presumed, pay the entire rent to the tenant for life, and is not bound to obtain the receipt of the trustees for the portion required by this Act to be set aside. Sect. 22 provides that capital money shall be paid either to the trustees, or into court at the option of the tenant for life, which does not seem to contemplate the payment being made by the tenant for life himself. The trustees are charged by this section with the onerous duty of receiving small periodical sums, or seeing that they are duly paid into court; and neglect in this particular, resulting in a loss to the estate, does not seem to be covered by the protection clauses of the Act (see ss. 41, 42). To whom rent is payable.

§ 11. The provisions of this section apply only to a mining lease, and, accordingly, it would seem that if the tenant for life grants an ordinary lease for twenty-one years, he will be entitled to the whole of the rent, even if the lessee works such mines as are open on the property, that being the extent to which a lessee is entitled to carry on mining operations. When the lease is silent on the subject, Lord Coke says, "A man hath land in which there is a mine of coals or of the like, and maketh a lease of the land (without mentioning any mines) for life, or for years; the lessee for such mines as were open at the time of the lease made, may dig and take the profits thereof:" Co. Lit. 54b. See *Clegg v. Rowland*, L. R. 2 Eq. 160; *Elias v. Griffith*, 8 Ch. D. 521.

Special Powers.

- § 12.** 12. The leasing power of a tenant for life extends to the making of—
- Leasing powers for special objects.
- (i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title; and
 - (ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
 - (iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

This section does not confer upon *lessees* any rights which they did not previously possess. It merely authorizes the tenant for life in certain cases, by the exercise of his leasing powers, to give legal effect to existing equities; and for that purpose to complete contracts, grant renewals, and cure technical defects in leases which are void or voidable.

It may be observed that this section professes to *extend* the leasing

powers of the tenant for life ; and it would, therefore, seem that the cases which it contemplates would not, except for its authority, be within the powers of the tenant for life. § 12.

There are two classes of contracts which a tenant for life or other limited owner may be called upon to complete : viz., (1) those entered into by a previous limited owner under the same settlement ; and (2) those entered into by the settlor or testator before the date of the settlement. i. Contracts.

As to the former, power is conferred upon the tenant for life by s. 31, *post*, to enter into contracts for leases, which may be enforced against, and carried into effect by any successor in title for the time being of the tenant for life. These leases must be in conformity with the provisions of the Act ; and, accordingly, independently of the present section, where one limited owner enters into a valid contract for a lease, any subsequent limited owner may, and indeed must, give effect to that contract by the exercise of his statutory powers.

This clause seems to be directed to the second class of cases to which we have referred. If, for example, a testator entered into a contract for a building lease for a term of 999 years, and died before completion, having devised the estate in strict settlement, it is conceived that under this section the tenant for life might grant a lease so as to give effect to such contract. He might in like manner carry out any other contract of the settlor or testator, although not in accordance with the regulations prescribed by this Act : see *Cust v. Middleton*, 3 D. F. & J. 33 ; *Re Kentish Town Estates*, 1 J. & H. 230. The expression "predecessors in title" is ambiguous, and as used in s. 31, *post*, is certainly confined to persons taking antecedent estates in the chain of limitations under the same settlement. It may, however, include—and this is its proper signification—the testator, settlor, or other person from whom the successor derives title.

Where a contract has been entered into under a power, it is considered as a defective execution, and will be aided by the Court in the same manner. "As against a remainderman both are equally binding. An instrument in the form of a contract for a lease will be construed as such, and not an actual lease, where the effect of the latter construction would be that upon the face of the instrument it would be a void execution of the power : " Sugden on Powers, 552, 8th ed. ; and see *Re Dyke's Estate*, L. R. 7 Eq. 337. See also as to what amounts to a contract for a lease, note to clause iii. *post*, p. 56. Operation of a contract under a power.

Under the second clause the tenant for life may grant a lease for ii. *Re-lives*, where, as is generally the case, the covenant for renewal is contained in a lease of that description. renewals.

In order to come within this section, the covenant must be capable of being enforced against the owner for the time being of the settled

§ 12. land, and it must therefore have been entered into either by an absolute owner, or a person acting under an exceptional power similar to that set out in *Brigstocke v. Brigstocke*, 8 Ch. D. 357.

An ordinary power of leasing does not authorize the insertion of a covenant to renew, but if such a covenant be inserted the validity of the lease will not be affected, for the lessor only, and not those in remainder, will be bound thereby: *Doe v. Bettison*, 12 East, 305; and see *Taylor v. Stibbert*, 2 Ves. jun. 437.

When the original lease contains a covenant for perpetual renewal, the renewed lease should contain a covenant for renewal in the same words: *Hare v. Burges*, 4 K. & J. 45; but when the reversion has become vested in trustees, they cannot be compelled to enter into a covenant to renew, and the proper form in such a case is a demise by the trustees for the new term, reciting the original covenant: *The Copper Mining Co. v. Beach*, 13 Beav. 478; *Hodges v. Blagrove*, 18 Beav. 404.

The tenant for life under the present section, being a trustee for all parties interested (s. 53), may, it is conceived, insist on adopting the latter form of renewal. As to renewal by guardians of infants and married women, see 11 Geo. 4 and 1 Will. 4, c. 65; and by the committees of lunatics, 16 & 17 Vict. c. 70, s. 134; and generally as to the renewal of leases, Woodfall, pp. 337-345, 12th ed.

iii. Confirmation of void or voidable leases.

Clause iii. seems to meet the two cases of (1) a demise by the settlor, which is void in consequence of not being under seal; and (2) a lease under a power which is defective "by reason of the non-observance or omission of some condition or restriction, or by reason of some other deviation from the terms of such power." 12 & 13 Vict. c. 26.

Void demise.

"It seems to be now settled that all instruments void at law as leases, but so expressed as to be capable of being construed as agreements for leases, are good as such agreements both at law and in equity": Dav. Conv. v., pt. i. 17, 3rd ed.; *Parker v. Taswell*, 2 De G. & J. 559; *Stranks v. St. John*, L. R. 2 C. P. 376.

If the settlor was absolutely entitled, any void lease, which is capable of being construed as an agreement, may be confirmed under this section by the tenant for life.

Lease under a power.

Where a lease was granted under a power, and all the terms of the power were not strictly observed, the Courts of Equity were accustomed to aid the lessee if the defect was one of form and not of substance. See Sugden on Powers, 714, 8th ed.

Now under "the Act for granting relief against defects in leases, made under powers of leasing, in certain cases" (12 & 13 Vict. c. 26), leases which are invalid, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of the power, are, if the lease has been made *bonâ fide*

and the lessee has entered, to be deemed valid contracts for leases, § 12.
 "save so far as any variation may be necessary in order to comply with the terms of such power."

By the Act to amend the last-mentioned Act (13 & 14 Vict. c. 17), the acceptance of rent amounts to confirmation of an invalid lease, if the person receiving the same by a note in writing shows an intention to confirm the lease (s. 2) ; and where the reversioner is able and willing to confirm the invalid lease, the lessee is bound to accept a confirmation accordingly (s. 3).

See as to confirmation of a void lease by the acts of a remainderman, Sugden on Powers, 716, 8th ed.

Surrenders.

13.—(1.) A tenant for life may accept, with or without § 13.
 consideration, a surrender of any lease of settled land, Surrender and new grant of leases.
 whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

§ 13. (6.) Every new or other lease shall be in conformity with this Act.

"Surrender, properly, is a yielding up of an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement": Co. Litt. 337b.

Where the tenant for life has only an equitable interest (s. 2 (5)), or the land is settled by way of trust for sale (s. 63), a curious question seems to arise as to the effect of a surrender to the tenant for life under this section. It cannot operate as a surrender, so as to merge the term in the freehold; for the so-called "tenant for life" has no legal estate in the settled land, and it does not seem to be in accordance with the intention of the Act that the tenant for life should hold the surrendered lease for his own benefit. The tenant for life under such circumstances would probably be held to be a trustee of the term for the benefit of those entitled in remainder. It is laid down in Sheppard's Touchstone that "where things may not pass by way of surrender, either because of an intervenient estate, or the like, if there be sufficient words in the deed, it may avail to other purposes, and may enure and pass the things by way of grant": p. 308. See also *Edwards v. Wickwar*, L. R. 1 Eq. 403.

"It has been repeatedly decided that the acceptance of a lease granted under a power, which was void for non-compliance with the terms of such power, was no surrender of a valid subsisting lease; for if a surrender is intended for a particular purpose, and that purpose fails, the surrender ought to fail": Byth. Conv. by Jarman, vol. viii. 121; *Davison v. Stanley*, 4 Burr. 2210.

Settled
Estates
Act.

Leases may be surrendered under the Settled Estates Act (40 & 41 Vict. c. 18), s. 7, and it has been held that a lease granted upon a surrender takes effect "in possession," so as to satisfy the requirements of the Act in that behalf, although an underlease granted by the surrendering lessee is unexpired: *Re Ford's S. E.*, L. R. 8 Eq. 309.

As to the surrender of contracts for leases, see s. 31, *post*, p. 96.

Sub-s. 1.
Considera-
tion.

The consideration referred to in the first sub-section seems to be payable by the lessee, implying that he pays to get rid of the lease. If, on the other hand, the lease is a beneficial one, there is no power to give consideration for the surrender, except under sub-s. 5, by taking it into account in the grant of a new lease. It may be mentioned that under the Stamp Act, 1870 (33 & 34 Vict. c. 99), s. 98, a lease is not to be charged with any duty by reason of being made in consideration of the surrender of any existing lease.

Stamp
duty.

In the great majority of cases surrenders are made with a view to obtaining a lease for an extended term, and in that case the con-

sideration moving from the lessee is in the nature of a fine for the grant of the new lease. **§ 13.**

The remedies against sub-lessees are now unaffected by the surrender of the lessee's interest : 8 & 9 Vict. c. 106, s. 9 ; and, on the other hand, their rights will not be prejudiced thereby. *Mellor v. Watkins*, L. R. 9 Q. B. 400. See further on the general subject of "surrender," Woodfall, 273 *et seq.*

The tenant for life is hereby empowered, as between him and the remaindermen, to agree to an apportionment of rent. In the absence of agreement the rent is apportionable by a jury : *Bliss v. Collins*, 5 B. & Ald. 876 ; *Roberts v. Snell*, 1 M. & Gr. 577. **Sub-s. 2. Apportionment.**

By the Conveyancing Act, 1881, s. 12, every condition or right of re-entry will, in case of a partial surrender, be apportioned and remain annexed to the reversionary estate in the land which has not been surrendered.

Sub-s. 5 overthrows the doctrine stated by Lord St. Leonards in these terms :—"But the existence of a lease, beneficial to the lessee, will not justify the grant of a new one at a less rent than the property is worth at the time : " Sugden on Powers, 787, 8th ed., citing *Wright v. Smith*, 5 Esp. Ca. 203 ; *Lefroy v. Walsh*, 1 Ir. C. L. Rep. N. S. 313. **Sub-s. 5. Conditions of new lease.**

The surrender of a beneficial lease is equivalent to the payment of a fine, and may be taken into account in the reduction of the rent under the new lease : See *Re Rawlins' Estate*, L. R. 1 Eq. 286.

Copyholds.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land. **§ 14. Power to grant to copy-holders licences for leasing.**

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

The provisions of this section are analogous to those of the 9th section of the Settled Estates Act ; and it is to be observed, that the copyhold tenant may himself be a tenant for life, in which case the powers of this Act would be called into requisition, as well for the **Licences to copy-holders.**

§ 14. lease as for the licence in pursuance of which it was granted. There is, however, no power given to the tenant for life of the copyhold to concur in fixing the amount of the fines. It would seem that the words, "any such lease as the tenant for life is by this Act empowered to make," have reference only to the length of the term, and not to the other regulations prescribed by ss. 7-9.

According to the custom of the manor of Ealing, the lord cannot license a lease for a longer term than twenty-one years : *Hanbury v. Litchfield*, 2 My. & K. 629. Where such a custom prevails it may be a question whether it is overridden by the present section.

Operation
of licences.

Except by licence or special custom, it must be remembered, a lease by a copyholder for more than a year is a cause of forfeiture, and the licence operates as a dispensation. "The terms of obtaining the lord's licence depend upon the custom of each particular manor, just as the fine on admittance ; but the licence is usually given as a matter of course, on payment of a certain fixed sum for each house or acre of land for each year of the term of the proposed lease : " Scriven 193, 6th ed.

Seem, any payment made for the grant of a licence would be "capital money arising under the Act."

It is important to observe that the power here conferred does not extend, like the ordinary form, to a licence to build or pull down houses, or to improve the premises. But this omission does not seem important, as the tenant generally enfranchises previously to incurring any serious outlay, and "meliorating waste," as it is called, does not seem to be a ground of forfeiture : *Hardy v. Reeves*, 4 Ves. 466, 480 ; *Doe v. The Earl of Burlington*, 5 B. & Ad. 507. The power of granting licences is, indeed, one which at the present day is but rarely employed.

Sub-s. 2.
Fixing the
annual
value.

Referring to the power of fixing the annual value for the purpose of assessing fines, Mr. Davidson remarks that "this may be the most important part of the power, especially as it would often be impracticable to make improvements, if the lord could not effectually remit the customary right to have the fines assessed on the improved value during a certain term : " Dav. Conv. iii. 542, 4th ed. As to the power of the lord of a manor, being a limited owner, to grant licences otherwise than in pursuance of a power authorizing him in that behalf, see Watkins on Copyholds ii. 111.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

§ 15.
Restriction
as to man-

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes

thereof, and other lands usually occupied therewith, shall § 15.
 not be sold or leased by the tenant for life, without the ^{sion house,}
 consent of the trustees of the settlement, or an order of ^{park, &c.}
 the Court.

The power of exchange conferred on the tenant for life by s. 3 is not restricted by this section, but it would amount to an evasion of the statutory prohibition if he might first exchange the mansion house for other land, and then sell the land taken in exchange, contrary to the provisions of this section. "It is not safe to accomplish indirectly by a power what it does not authorize to be done directly:" Sugden on Powers, 867, 8th ed.

The expression "principal mansion house" is not a term of legal ^{Principal} signification, and would, of course, if not confined by the context, ^{mansion} include any dwelling-house on a plot of land. But the language of ^{house.} the section points to halls, castles, manor-houses, and country seats, and will probably be read as limited to family residences of that character. See *Re Spurway's S.E.*, 10 Ch. D. 230.

Where a mansion house and park were devised in strict settlement, with an express direction that they should not be let, the Court refused to sanction a lease for seven years, although the remaindermen concurred; the income was insufficient to keep up the house, and the arrangement would have been advantageous to all parties: *Re Duchess of Cleveland's S.E.*, 22 W. R. 818. The decision in this case must be referred to the prohibition in the will; for, independently of the present Act, the Court would, under the circumstances of that case, authorize a sale of a mansion house and family estate: *Quin v. Tyler*, 26 Sol. J. 465.

It seems that, if the tenant for life enters into a contract for the ^{Specific} sale of the settled land, including the mansion house, and fails to ^{perform-} obtain the consent of the trustees, or an order of the Court as ^{ance with} required by this section, specific performance as to the rest of the ^{compensa-} land, with compensation in respect of the mansion house, cannot be ^{tion.} enforced either by vendor or purchaser.

The converse case is put by Lord St. Leonards, who states that "a seller could not at the election of the purchaser be deprived of his mansion house and park, to which he could make a good title, whilst a large adjoining estate held and sold with it would be left on his hands with a proclaimed bad title:" Sug. V. & P. 316, 14th ed.

Streets and Open Spaces.

16. On or in connexion with a sale or grant for building § 16.
 purposes, or a building lease, the tenant for life, for the ^{Dedication}
^{for streets,}

§ 16. general benefit of the residents on the settled land, or on any part thereof,—
open spaces, &c.

- (i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and
- (ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be enrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

The powers here conferred upon the tenant for life are similar to those which the Court was authorized to exercise by the Settled Estates Act, s. 20.

It is important to observe, that the tenant for life cannot, out of generosity or public spirit, dedicate gratuitously a portion of the estate to the purposes of this section. The dedication must be made "on or in connexion" with a building scheme, the rents to be obtained being naturally increased by the advantages offered to the public. The power is presumably conferred for the purpose of disposing of

the settled land on more advantageous terms than could otherwise have been obtained. § 16.

It was pointed out by V. C. Wood, in *Re Hurle's S. E.*, 2 H. & M. 196, that the construction of roads might be requisite in other cases than where houses are to be erected. But it seems that those cases (*e. g.*, where a new railway station has been opened in the neighbourhood) are not included in this section.

The execution of the works authorized by this section may be paid for out of capital moneys arising under the Act (s. 25, xvii.); and, accordingly, the tenant for life may sell part of the settled land to pay for making roads on another part. This the Court had no power to do under the Leases and Sales of Settled Estates Act (*Re Chambers*, 28 Beav. 653; *Re Hurle's S. E.*, *ubi supra*; *Re Venour's S. E.*, 2 Ch. D. 522); a deficiency which was remedied by 39 & 40 Vict. c. 30; and see now the Settled Estates Act, 1877, s. 21.

The tenant for life has no power to raise capital money by mortgage except for the special purposes enumerated in s. 18. If, therefore, there are no funds available, and if a sale is inexpedient, application must still be made to the Court, under the Settled Estates Act, to sanction the execution of the works, and the raising of the money by charge or mortgage. Raising expenses by mortgage.

Some difficulty may arise on the construction of the second clause, as to conveying the appropriated parts to trustees, when the legal estate is vested in the successive beneficiaries. The tenant for life does not seem to take a statutory power of conveyance, nor does the case fall within s. 20, *post*, and he is by this section only empowered "to provide" for the vesting of the estate. Vesting squares or open spaces in trustees.

By s. 23, *post*, the tenant for life is bound, if the Land Commissioners order him to do so, "to maintain and repair at his own expense" every improvement executed under the Act. The special provision made for repairs by this section, seems only to apply where the improvement is self-supporting, as in the case of a square for which the residents subscribe. As to what will amount to a dedication of a highway to the public, and the liability for repairs in such a case, see *Healey v. Corporation of Batley*, L. R. 19 Eq. 375. Repairs.

The dedication of an open space for the gratuitous use of the public would seem to be a "charity" (see *Townley v. Bedwell*, 6 Ves. 194); and the deed carrying it into effect must therefore conform to the requirements of the Mortmain Act (9 Geo. II. c. 36), none of which are hereby dispensed with. Thus, it must be enrolled in the central office (Ord. LX. A, r. 6), within six months after execution, and if the tenant for life die within twelve months, the deed will be void. See notes to *Corbyn v. French*, in Tudor's L. C. on Conv. 543, *et seq.*, 3rd. ed. Inrolment of deed.

As to gifts by deed or will for public parks, schools, and museums,

- § 16.** see 34 & 35 Vict. c. 13, and further as to the conveyance of land to charities, Dav. Conv. ii., part i. 478, 4th ed.

Surface and Minerals apart.

- § 17.** **17.**—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

Separate dealing with surface and minerals, with or without wayleaves, &c.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Surface and minerals apart.

This section generalizes s. 19 of the Settled Estates Act, 1877, which provides, in terms, only for the reservation of the minerals on a sale of the surface, and does not extend to the sale of the minerals without the surface, or to any other form of alienation but a sale. It was held, however, under the corresponding section of the previous Act (19 & 20 Vict. c. 120, s. 13), that the minerals might be sold apart from the surface: *Re Law*, 7 Jur. N. S. 511; S. C. *sub. nom. Re Mallin's S. E.*, 3 Giff. 126; and that rights of using the surface for the workings might be conferred on the purchaser, a rent being reserved in respect of the acreage damaged from time to time: *Re Milward's Estate*, L. R. 6 Eq. 248. The present section, it will be observed, is not confined to the case of a sale, but is perfectly general in the power which it confers of treating the surface and the minerals as distinct inheritances, and subjecting either of them to burthens or servitudes in favour of the other, and this whether the servient tenement is the one disposed of or retained. As to the rights which arise on the severance of the surface from the mines beneath it, see *Duke of Hamilton v. Graham*, L. R. 2 H. L. Sc. 166; *Ramsay v. Blair*, 1 A. C. 701.

As to the difference between an "exception" and a "reservation," see Dav. Conv. i. 96, 4th ed. Under the ordinary form of the power of sale and exchange trustees could not sell the lands with a reservation of the minerals: *Buckley v. Howell*, 29 Beav. 546. In conse-

quence of this decision the law was altered by the Confirmation of Sales Act (25 & 26 Vict. c. 108), which enacted that every trustee and other person having a power of sale over land might, with the sanction of the Court of Chancery, dispose of the land or minerals separately, unless forbidden to do so by the instrument creating the trust or power. § 17.

It is important to observe that, by virtue of s. 51, *post*, the tenant for life cannot be deprived by the settlement of the power of separate disposition herein conferred; and that, where he is unimpeachable for waste, he may (as pointed out by the late Master of the Rolls in *Buckley v. Howell*, *ubi supra*), work the reserved minerals for his own benefit, and invest the proceeds of sale of the surface in another estate with valuable minerals under it. He would thus get the minerals from under the two estates. There is, indeed, no reason why he should stop there. He might in like manner sell the surface of the second estate reserving the minerals, and re-invest in a third mineral property; a course of dealing which would, of course, prejudice the interests of the remainderman. By s. 3, *ante*, p. 31, the mines or minerals may be reserved on enfranchisement.

Mortgage.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act. § 18.

It is only for the special object mentioned in this section, namely, enfranchisement and equality of exchange or partition, that the tenant for life is expressly authorized to raise money by mortgage. The restriction, however, cannot be considered effectual, for under s. 40, the mortgagee is not bound "to see that any money is wanted for any purpose of this Act, or that no more than is wanted is raised." The Act itself, indeed, seems to contemplate more money being raised than is actually wanted; for s. 21, referring no doubt to the provisions of the present section, provides for the investment of capital money, subject to "application for any special authorized object for which the same was raised." Mortgage for equality money, &c.

Although the tenant for life may thus raise money without reference to the special objects mentioned in this section, no mischief can practically result from his unlimited power in this respect. An

§ 18. effectual check is furnished by s. 22, which requires capital money to be paid either to the trustees of the settlement, or into Court ; and, therefore, no transaction can be carried out to its conclusion between the mortgagee and the tenant for life alone ; whatever money is raised being thus preserved for the benefit of the remainderman.

The "money required for enfranchisement" mentioned in this section is that payable by the copyholder, and does not include the expenses of the lord under s. 3 (ii.) in effecting an enfranchisement. See the Copyhold Act, 1852 (15 & 16 Vict. c. 51), s. 31, which provides that these expenses, where the lord has but a limited interest, may be charged on the manor, or other lands settled or held therewith. No provision is in this Act made for their payment, but it is presumed that they may be deducted out of the enfranchisement consideration.

Capital money arising under the Act from whatever source it springs may be applied to the purposes here specially provided for (see s. 21 (iv.) and (v.)), and when such money is available it will of course be unnecessary to make use of this power.

For form of mortgage under this section, see p. 165, *post*.

Undivided Share.

§ 19. **19.** Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Concurrence in exercise of powers as to undivided share.

Undivided share. "Land" by the definition in s. 2 (10) includes an "undivided share in land:" and, accordingly, where an undivided share is settled, it constitutes the "settled land," within the meaning of the powers conferred by this Act. Without the assistance of this section the tenant for life could thus have exercised his powers, but only to a limited extent. He could have made partition, or sold his share, or concurred with the owners of the other share in selling the entirety: *Re Cooper & Allen's Contract*, 4 Ch. D. 802 ; but he would have been unable to grant or to concur in granting a lease: *Tolson v. Sheard*, 5 Ch. D. 19.

It may be observed that in the case of an undivided share the question of apportionment of the purchase-money is a mere matter of calculation ; and the difficulty does not arise which proved fatal to the purchase in *Rede v. Oakes*, 4 D. J. & S. 505, and which was sur-

mounted in *Cavendish v. Cavendish*, L. R. 10 Ch. 319, and *Morris v. Debenham*, 2 Ch. D. 540. § 19.

Under the Settled Estates Act, although there is no section analogous to this, the Court has occasionally made orders for the sale of the entirety where only one undivided share was subject to the settlement: *Re Shephard's S. E.*, L. R. 8 Eq. 571. See, however, *Re Thompson's S. E.*, Joh. 418; *Grey v. Jenkins*, 26 Beav. 351.

By s. 17, *ante*, p. 64, an exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge. § 20.

Comple-
tion of
sale, lease,
&c., by
conveyance.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of

§ 20.

common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

Convey-
ance in
exercise of
powers.

This section furnishes the machinery whereby the powers, previously conferred upon the tenant for life, are to be carried into effect by conveyance. In strict settlements, *i.e.* where the limitations are legal, the manner in which, under the ordinary power, the conveyance operates is by the revocation of the uses of the settlement, and an appointment by the trustees to the new uses. This power of revocation and new appointment, which is always annexed to a power of sale in such settlements, enables the trustees by virtue of the Statute of Uses to vest the legal estate in the purchaser, the declaration of the use being fed by the original seisin of the grantees to uses in the settlement.

Under this Act the operation of the statutory conveyance is entirely different. The estate is transferred by virtue of this statute alone; and, upon the execution of the conveyance, it goes over from the person in whom it was previously vested to the person named in such conveyance, so as to give effect to the sale, exchange, partition, lease, mortgage, or charge.

The first sub-section, indeed, speaks of a conveyance to uses as if there were an implied power of revocation and new appointment,

but the second sub-section makes it clear that the conveyance is to operate as a statutory power quite irrespective of the Statute of Uses. § 20.

The manner in which leases and conveyances take effect under the Settled Estates Act, is provided for by ss. 12 and 22 of that Act, and in both cases they are "to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct."

"A power given by a will or by an Act of Parliament to sell an estate is a common law authority. The estate passes by force of the will, or Act of Parliament, and the person who executes the power merely nominates the party to take the estate." Sugden on Powers, 45, 8th ed. The distinction is of importance with reference to the form of the conveyance. Where the appointment operates under the Statute of Uses, the legal estate vests irrespective of intention in the first person named as an appointee. In the case of a common law authority the appointment of the estate to A. and his heirs to the use of other persons, "would not of itself vest the legal estate in A., but would give the legal estate to the real objects of the appointment." Sug. on Powers, 196, 8th ed.

This section, and the same remark applies to the greater part of this Act, seems to have been framed with special reference to land subject to the limitations of a strict settlement: but it must not be forgotten that the powers conferred by it are equally applicable in the case of a house and field devised by will, as in that of a family estate with its complicated limitations, and portions, jointures, and incumbrances.

Express mention is made of "copyhold or customary or leasehold land vested in trustees," and upon these words two questions arise: Copyholds and leaseholds. (1.) Must the trustees, in the case of copyholds, have been actually admitted? (2.) Where copyholds or leaseholds have been limited by will to several persons in succession without the intervention of trustees, can the tenant for life convey the legal estate under this section?

The same answer must be given to both these questions. The section is to be read as a piece of machinery for effectuating the powers previously conferred, and as the tenant for life in both cases would have undoubtedly a power of sale, &c., it must be presumed that he also takes a power of conveyance. Moreover, the generality of the words, "may as regards land sold," is not necessarily curtailed by the subsequent express provision for the case of trustees.

It may be observed that the power of conveying or creating easements, easements, rights, and privileges, is confined to the cases of sale rights, or and leasing. There is no provision made for partition or ex-privileges. change, although s. 17 clearly confers power in these cases to

§ 20. grant such rights where the surface or the minerals are separately disposed of.

As to the creation of easements by way of use, see the Conveyancing Act, 1881, s. 62.

Sub-s. 2.
Incum-
brances.

The great difficulty in the practical working of this Act arises from the circumstance that, roughly speaking, every settled estate is subject to incumbrances which fetter the power of alienation. We have already seen (s. 5) that, with the consent of the incumbrancer, the tenant for life may charge an incumbrance upon any other part of the settled land in exoneration of the part sold; but if this cannot be done the conveyance can only be made subject to the rights mentioned in sub-s. (2). The following table of the various incumbrances which very commonly affect land in strict settlement, is furnished as an illustration of the three sub-clauses.

i. Paramount charges :

- (a.) Mortgage for gross sum.
- (b.) Jointure rent-charge.
- (c.) Portions under previous settlement whether actually raised or not.

ii. Settlement charges :

- (a.) Mortgage for gross sum under a power.
- (b.) Pin-money or jointure rent-charge as the case may be.
- (c.) Portions actually raised.

iii. Rights of occupation :

- (a.) Leases, &c.
- (b.) Rights of common, &c.

All the foregoing charges retain their priority in the case of a statutory conveyance, in the same manner as they would if the estate were conveyed in exercise of a power. See Sugden on Powers, 489, 8th ed. ; Dav. Conv. iii., 591 *et seq.*, 3rd ed. It seems doubtful how far the tenant for life may concur with all or any of these incumbrancers in a sale free from their respective incumbrances. The Act is very explicit that the deed shall only be effectual to pass the land subject to and with the exception of the specified charges; but it is submitted that the incumbrancers (at all events where they join only for the purpose of releasing the land sold, and receive no part of the purchase-money) do not by joining affect the validity of the statutory conveyance.

"Trustees of a settled estate," says Mr. Lewin (and his reasoning seems to apply to the tenant for life under this Act), "with a power of sale and re-investment may, it is conceived, sell part of the estate to pay off a mortgage affecting the estate though not mentioned in the settlement, for this in substance is a re-investment; and *a fortiori* if the trustees have a power of investing on real securities until a purchase can be found, they can sell part of the estate and

apply the proceeds in taking a transfer of the mortgage, provided it be an adequate security : " Lewin on Trusts, 514, 7th ed. § 20.

See also, as to the power of trustees to concur with others in selling the trust property, The Conveyancing Act, 1881, s. 35.

In addition to the incumbrances already referred to there are others *Life estate* which will materially affect the operation of this section. The tenant *charges* for life cannot by any device deprive himself or be deprived of the statutory powers (ss. 50, 51), but if he mortgages his life estate he is by s. 50 unable to exercise the powers to the prejudice of his mortgagee. Where, therefore, the tenant for life has assigned or mortgaged his estate, or has become bankrupt, his powers are not suspended or extinguished, but they are practically paralyzed, unless he can obtain the concurrence of his assignee, mortgagee, or trustee in bankruptcy.

With respect to copyholds the statutory conveyance resembles a *Sub-s. 3.* bargain and sale in pursuance of a power given by will, which is *Copyholds.* sufficient *without any surrender* to vest the right to admittance in the purchaser. Covenants for title under the Conveyancing Act, 1881, s. 7, may therefore be implied in the deed.

For form of bargain and sale of copyholds see *Dav. Conv. ii.*, pt. 1, 374, 4th ed.

Difficulties may occasionally arise in practice as to the production *Production* of the settlement to the steward of the manor. The legal tenant *of the* for life of freeholds is entitled as a matter of right to the possession *settlement.* of the title deeds : *Garner v. Hannynghton*, 22 Beav. 627 ; *Althwood v. Heywood*, 1 H. & C. 745 ; *Leathes v. Leathes*, 5 Ch. D. 221 ; except when he had been guilty of misconduct with respect to the deeds : *Jenner v. Morris*, L. R. 1 Ch. 603 ; or there is a pending suit, *Stanford v. Roberts*, L. R. 6 Ch. 307 ; or they have been impounded by the Court for safe custody : *Ford v. Peering*, 1 Ves. jun. 72. In the case of leaseholds the executors seem to have an absolute right to the deeds until the debts have been paid and the personal estate cleared : *Lewin*, 582, 7th ed.

If the tenant for life is only equitably entitled, the *right* seems greatly to depend upon the *fact* of possession. In other words, in the absence of special circumstances, the person who has got the deeds may keep them : *Taylor v. Sparrow*, 4 Giff. 703 ; and see *Lady Langdale v. Briggs*, 8 D. M. & G. 391, 416. There may be cases, therefore, in which the tenant for life neither has the deeds nor has a right to call for them, though he may be entitled to inspect them (see *Conv. Act*, 1881, s. 16) ; and if they are, for example, in the custody of the remaindermen, of the Court, or of mortgagees, he may not be able to comply with the steward's requisition.

It may also be observed that where the tenant for life has not the *Covenant* possession of the deeds, he cannot, since he does not " retain pos- *for pro-* session," give an acknowledgment and undertaking under s. 9 of *duction.*

§ 20. the Conv. Act, 1881, but must enter into the covenant formerly adopted.

Succession
duty.

Where a tenant for life and remainderman join in the sale of an estate, it remains liable in the hands of the purchaser to succession duty on the death of the tenant for life; *secus* where the sale takes place under a power, or by virtue of the Settled Estates Act: *Re Warner's S. E.*, 17 Ch. D. 711, the duty being in those cases shifted from the land to the purchase-money or its investments. The same principles seem to apply here and to free the land from the succession duty payable on the death of the tenant for life, but not from that payable in respect of terminable charges anterior to the settlement. See, however, *Dugdale v. Meadows*, L. R. 6 Ch. 501, and the remarks thereon in *Dav. Conv. ii.*, pt. i., 313, 4th ed., where it is stated that "the decision is not recognised as valid by the Crown, and is manifestly wrong." See also *Re Cooper & Allen's Contract*, 4 Ch. D. 802.

Cumulative
powers.

It should be pointed out that, in addition to the powers conferred on the tenant for life by this Act, the trustees with his consent (s. 56), or without it if he is an infant (s. 60), may exercise any similar powers conferred upon them by the settlement. If they do so the deed will take effect, not under this section, but as an appointment under the power; and the purchase-money, except in the case provided for in s. 33, will not be capital money arising under the Act, but must be applied in pursuance of the directions in the settlement. Where both sets of powers are exercisable by the trustees (as they may be in the case of the infancy of the tenant for life), they may adopt either procedure indifferently, but care should be taken to pursue throughout the provisions either of the statute or of the settlement.

Tenant in
tail.

A tenant in tail (s. 58) exercising the powers of this Act, can, it seems, do so without an enrolled deed.

Covenants
for title.

The tenant for life is of course bound to enter into covenants for title, which must be carried back to the acts of the testator, or of the settlor if the settlement did not contain the usual covenants: but, "although a tenant for life or other owner of a particular estate may be required so to covenant in respect of his own beneficial interest, yet as respects the reversion (in which he has *no* beneficial interest), his liability under the covenants should be confined to the acts of himself and parties claiming under him." *Dart*, V. & P. 548, 5th ed.

This is the practice now universally adopted, notwithstanding the cases of *Re the London Bridge Acts*, 13 Sim. 176; and *Earl Poulett v. Hood*, L. R. 5 Eq. 115; where it was held, that the tenant for life must enter into the ordinary covenants for title. See also *Sugden*, V. & P. 575, 14th ed. It is important to observe that if the tenant for life conveys as *beneficial owner*, the covenants implied under s. 7 of the Conv. Act, 1881, will be qualified in the manner recommended

by Mr. Dart ; that is to say, as to his life estate, they will extend to the acts of all persons through whom he derives title otherwise than by purchase for value ; but as to the reversion, to which he has no title, the implied covenants are confined to his own acts. **§ 20.**

So far the statutory covenants seem to be perfectly satisfactory ; but, if the vendor is not the first tenant for life, they will require to be expressly extended to the acts of prior owners in the chain of limitations. For example, if land is limited to A. for life, remainder to B. for life, remainder to C. in tail ; and, A. and B. being dead, C. sells the land under this Act. Since he does not in any sense derive title from A. or B. the statutory covenants will be found not to extend to the acts of either of them. See Form of Proviso, *post*.

The following references as to matters incidental to the conveyance may be found useful :—As to payment of the purchase-money, s. 22 (1) ; as to trustees' power to give receipts, s. 40 ; as to the discharge of the purchaser paying his purchase-money to the trustees, s. 40 ; or into Court, s. 46 (2) ; as to the general protection of *bond fide* purchasers, s. 54 ; as to the power to execute the deed, s. 55 (2) ; and as to the investment of the purchase-money, s. 21. **References to incidental matters.**

Forms of Conveyances under this section will be found in the second part of this volume, p. 159, *et seq.*

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely): **§ 21.** Capital money under Act ; investment, &c. by trustees or Court.

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a divi-

§ 21.

- dend on its ordinary stock or shares, with power to vary the investment into or for any other such securities :
- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land :
 - (iii.) In payment for any improvement authorized by this Act :
 - (iv.) In payment for equality of exchange or partition of settled land :
 - (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
 - (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
 - (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
 - (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
 - (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :

- (x.) In payment of costs, charges, and expenses of or § 21.
 incidental to the exercise of any of the powers,
 or the execution of any of the provisions, of this
 Act :
- (xi.) In any other mode in which money produced by
 the exercise of a power of sale in the settle-
 ment is applicable thereunder.

As to the various sources whence "capital money" may arise ^{Investment} under the Act, see *ante*, p. 11. It should be observed that a dis- ^{of capital} tinction is drawn between "investment" and "application" of the money. ^{money.} the capital money, the former expression being confined to the securities specified in clause i., the latter embracing the other modes in which the money may be applied. This section, authorizing investments which cannot be changed without the consent of the tenant for life, overthrows the doctrine of Lord Eldon, that "the object of the sale must be to invest the money in the purchase of another estate, to be settled to the same uses." *Mortlock v. Buller*, 10 Ves. 292, 308.

Compare with this section the provisions for investment contained in the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), s. 69, and the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 34.

The words "subject to payment of claims properly payable there- ^{Payment} out" must be meant to apply to the discharge of incumbrances, and ^{of claims} the payment of costs, charges, and expenses incidental to the exercise ^{properly} of the powers of the Act, although they seem to be surplusage, since ^{payable} ^{thereout."} those objects are specially provided for under clauses ii. and x. of this section.

The cases provided for in s. 18 seem to be referred to by the "Special words "for any special authorized object for which the same was ^{authorized} raised." ^{object."}

As to the meaning of "Government Securities," see the Court of i. Govern- Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 3, where the ^{ment} expression is defined. "Securities" by s. 2 (10) includes stocks, ^{securities.} funds, and shares.

Trustees are "by law authorized" to invest trust funds "in any of ^{By law} the parliamentary stocks, or public funds, or in any security the ^{authorized.} interest of which is guaranteed by Act of Parliament, or in stock of the Bank of England, or Ireland, or East India stock, charged on the revenues of India, or in Metropolitan Consolidated Stock, or on real securities in any part of the United Kingdom." *Prideaux Conv.* ii. 146, 11th ed. See 22 & 23 Vict. c. 35, s. 32; 23 & 24 Vict. c. 38, s. 11; 30 & 31 Vict. c. 132; 34 & 35 Vict. c. 47, s. 13; and the General

§ 21. Order of the Court of Chancery dated 1st Feb., 1861. For a Form supplementing this power of investment, see *post*, p 187.

ii. Dis-
charge of
incum-
brances.

A mortgage in fee, whether made before the settlement, or by virtue of a power therein contained, may be paid off under this clause ; but it seems that if money has been raised by the mortgage of a long term of years, or by "creation of a term of years in the settled land," under the provisions of ss. 5, 18, or 47 of this Act, or if leaseholds have been mortgaged by sub-demise, the powers hereby conferred are not available.

Such incumbrances, although they practically fall upon the successive owners of the estate, yet do not "affect the inheritance or other the whole estate the subject of the settlement."

It must be also observed that the clause, although this cannot have been intended, permits terminable charges to be redeemed out of capital if they affect the inheritance. A tenant for life, for example, who has contracted a loan under the Public Money Drainage Act (9 & 10 Vict. c. 101), or Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), may at once sell part of the settled land and relieve himself of the future payments by paying off the charges.

Land tax,
tithe rent,
charge, &c.

As to the redemption of land tax, see Woodfall, 542, 12th ed.; and as to the proof of redemption, Dart, V. & P. 352, 5th ed.; as to tithe rent-charge, see 6 & 7 Will. 4, c. 71, and as to redemption thereof, 9 & 10 Vict. c. 73 ; 23 & 24 Vict. c. 93 ; 41 & 42 Vict. c. 42 ; as to the redemption of chief-rent, quit-rent, or other perpetual charges, the Conveyancing Act, 1881, s. 45, under which these small payments may sometimes be redeemed through the agency of the Copyhold, now the Land Commissioners.

It has been held that a leasehold interest is an "incumbrance" within the 69th section of the Lands Clauses Consolidation Act : *Re Manchester, &c., Ry. Co.*, 21 Beav. 162 ; *Ex parte Corporation of London*, L. R. 5 Eq. 418 ; but the conflicting rights of tenant for life and remainderman seem to render those decisions inapplicable to the present section.

iii. Im-
prove-
ments.

For an enumeration of the improvements authorized by the Act, see s. 25.

iv. Equality
money.

Special power is conferred by s. 18 to raise by mortgage any money wanted for the purpose of enfranchisement, or equality of exchange or partition under s. 3.

v. Enfran-
chisement.

See as to enfranchisement, note to s. 3, *ante*, p. 33.

vi. Rever-
sion of
leaseholds.

The words "or freehold" did not occur in clause vi. as originally introduced. "Freehold in fee" being a phrase of the first impression, the effect of these words is not very clear, but they seem to authorize, by implication, the purchase of a leasehold reversion, where a sub-term is comprised in the settlement.

It must also be observed that the words "so as to merge the lease-

hold interest in the reversion," which originally qualified the clause, have been omitted in the Act. The directions contained in s. 24, as to the settlement of purchased land, make it clear that no merger can take place. The freehold is to be conveyed to the uses of the settlement, the leasehold interest will continue to be vested in the trustees upon trusts corresponding as nearly as may be with the limitations of the freeholds; the result of which would seem to be that, notwithstanding the purchase of the reversion under this clause, the leasehold interest may vest absolutely in a tenant in tail, while the reversion goes over to the next taker under the limitations of the settlement. § 21.

Where the settled land consists *wholly* of leaseholds, some difficulty seems to arise, except where the settlement is by way of trust for sale (see s. 63), as to the manner in which the reversion in fee is to be made subject to the settlement. For, since there are no freeholds comprised in the settlement, the limitations will be inapplicable to land of that description.

It has been held that the direction in the 34th section of the Settled Estates Act, "to purchase other hereditaments," is satisfied by an expenditure in building, the cases proceeding "on the principle that the erection of a new building is substantially the same thing as the purchase of a new estate." *Per* James, L. J., in *Re Newman's S.E.*, L. R. 9 Ch. 681, where the previous cases are collected. See also *Re Leslie's Settlement*, 2 Ch. D. 185; *Re Speer's Trusts*, 3 Ch. D. 262; *Donaldson v. Donaldson*, 3 Ch. D. 743; but repairs and permanent improvements do not come within this principle: *Drake v. Trefusis*, L. R. 10 Ch. 364; nor will the money be applied in recouping the tenant for life an expenditure already made: *Re Stock's Estates*, 42 L. T. Rep. 46. vii. Purchase of land.

It is very doubtful how far the decisions on the Settled Estates Act, as to investing on buildings, are applicable to this Act; for it must be observed that s. 24 contemplates that the land purchased shall, in all cases, be made subject to the settlement by conveyance, which of course would be unnecessary in the case of buildings erected on the settled land.

The principle of treating the mines and minerals as a distinct inheritance from the surfaces, which is recognised in s. 17, is still further exemplified by the power of investment in clauses vii. and viii. vii. viii. Mines and minerals.

It seems to be now settled, after much conflict of judicial opinion, that a tenant in tail is not a person "absolutely entitled," unless he executes a disentailing assurance: *Re Reynolds*, 3 Ch. D. 61 (following *Re Butler's Will*, L. R. 16 Eq. 479, and *Re Broadwood's S. E.*, 1 Ch. D. 438; and overruling *Re Row*, L. R. 17 Eq. 30), and the authorities there cited. Payment into Court to the credit of a ix. Person absolutely entitled.

§ 21. lunacy is not a payment to a "person becoming absolutely entitled:" *Re Barker*, 17 Ch. D. 241.

Although capital money may in the first instance be paid either to the trustees of the settlement, or into Court; it does not seem clear that once in Court it can be paid out to the trustees to be applied by them.

Under the Lands Clauses Consolidation Act (8 Vict. c. 18), s. 69, money in Court has been paid out to trustees having a power of sale as persons "absolutely entitled:" *Re Hobson's Trusts*, 7 Ch. D. 708; and, with the consent of the tenant for life, before the time fixed for sale: *Re Morgan's S. E.*, L. R. 9 Eq. 587; *Re Evans' Settlement*, 14 Ch. D. 511; even where the instrument contained no receipt clause: *Re Gooch's Estate*, 3 Ch. D. 742. See, however, *Re Reaston's Estate*, L. R. 13 Eq. 564; *Re Sovory*, L. R. 8 Ch. 736.

It may be observed that the 36th section of the Conv. Act, 1881 (which is retrospective), now confers upon trustees a power of giving receipts for "any money, securities, or other *personal* property or effects;" and the question may arise whether trustees can give a discharge for money in Court under this Act, since by s. 22 it is "for all purposes of disposition, transmission, and devolution to be considered as *land*." See The Ch. Funds Consol. Rules, 1874, r. 38.

x. *Costs.*

Capital money may be applied by the trustees in the payment of the costs, not only of selling, &c., under the Act, but also of executing any of its provisions. This will include the cost of a scheme for improvement and preliminary surveys, and of any application to the Commissioners under s. 26.

The Court has by s. 46 (6), "full power and discretion" as to the costs, charges, and expenses of the parties to any application. See also ss. 36 and 47.

xi. In any other authorized mode.

It seems that the settlor cannot "by a declaration of a contrary intention," *exclude* any of the foregoing modes of investment. Otherwise, the beneficial operation of the Act might be practically nullified by a direction that capital money should be invested in the purchase of land *and in no other form* of investment.

Where the settlement is by way of trust for sale, capital money cannot be applied in the purchase of land unless such application is authorized by the settlement. See s. 63 (2), ii. *post*, p. 144.

§ 22.

Regulations respecting investment, devolution, and income

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees. § 22.
of securi-
ties, &c.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

The policy of the Act, which seems to be to entrust the tenant for life with all the administrative powers of an absolute owner, is strikingly exemplified in this section. At his option the capital money is to be paid to the trustees or into Court; according to his direction the trustees are bound to apply any money in their hands in any of the authorized modes; and no change can be made in the investments without his consent. Regula-
tions re-
specting
invest-
ment, &c.

§ 22.

Sub-s. 1.
Option of
tenant for
life.

The tenant for life may require any purchaser or other person to pay "capital money," either to the trustees, or into Court. This option, under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), ss. 34, 35, rested with the Court; and, upon a sale out of Court, the trustees have been directed to re-invest the purchase-money in manner provided by the Act without any further application to the Court: *Re Hoare's S. E.*, 30 W. R. 177, not following *Re Dryden's S. E.*, 29 W. R. 884. Money may be paid into Court without an order, on a direction from the Chancery Paymaster obtained on the written request of the person desirous of paying in the money, or of his solicitor, Ch. Funds Consol. Rules, 1874, r. 25. See as to bringing funds into Court, Seton, 73 *et seq.*

Sub-s. 2.
Investment
or applica-
tion.

The distinction between "investment" and "application" should be carefully noticed with reference to the concluding words of this sub-section. The former is the particular mode of application authorized by s. 21, clause i., whereas the latter includes all the various ways in which capital money may be applied. It should be observed that the trustees under this sub-section must obey the direction of the tenant for life; and that their discretion arises only in default of such direction; and it seems that the tenant for life cannot be fettered by the settlement in directing the mode of investment, or other application of the capital money; for it is only where the trustees are exercising their discretion that regard is to be had to "any consent required on direction given by the settlement."

Sub-s. 3.
Applica-
tion to the
Court.

"Application" is in this sub-section used in two senses. Where the word occurs for the second time, it means an application to the Court which by s. 46 may be made either by petition or by summons at chambers. The costs of the application are by the same section left to the discretion of the Court; and as a general rule they would seem to be properly payable out of *corpus*.

It is to be observed that the remainderman has no *locus standi* with respect to investment, or other application of the capital money, and should not be served unless the Court under s. 46 (5) should so direct.

The difficult questions which have, from time to time, arisen under the Lands Clauses Consolidation Act (s. 69), and the Settled Estates Act (s. 34), as to the application of money in Court for various improvements (see *Re Venour's S. E.*, 2 Ch. D. 522; *Re Poynder*, 30 W. R. 7; *Re Leadbitter*, 30 W. R. 378), are provided for by s. 25, *post*; but those relating to buildings and repairs stand upon the same footing as under the former Acts. See note to s. 21 (vii.).

Sub-s. 5.
Capital
money to
be consi-
dered as
d.

In the case of a settlement made by way of trust for sale, the capital money arising under the Act is by s. 63 (2), *post*, excepted from the operation of this clause. Under the Settled Estates Act (s. 34) purchase-money retains its character of real estate: *Foster v.*

Foster, 1 Ch. D. 588 ; *Mildmay v. Quicke*, 6 Ch. D. 553 ; *Re Barker*, § 22. 17 Ch. D. 241 ; but under s. 21 of this Act there is not such an unqualified trust for re-investment in real estate as would, in the absence of express provision, effect a constructive conversion of the money into land : see *Atwell v. Atwell*, L. R. 13 Eq. 23.

A person absolutely entitled may, of course, elect to take the money as personal property ; as to which, see notes to *Fletcher v. Ashburner*, 1 L. C. in Eq. p. 928, 5th ed. ; but, *semble*, such election cannot be made until all the uses of the settlement are exhausted, including a legal jointure : *Walrond v. Rosslyn*, 11 Ch. D. 640.

A question arises upon this sub-section, where the purchase-money arising from the sale of leaseholds has been applied in the improvement of freeholds, whether a tenant in tail, who would have been absolutely entitled to the leaseholds, is entitled to a charge upon the freeholds for the amount expended ? And the answer must it seems be in the affirmative.

23. Capital money arising under this Act from settled § 23. land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same. Investment in land in England.

That "England" in an Act of Parliament includes Wales, see England and Wales. note to s. 4 (8), *ante*, p. 40.

Compare the corresponding provision in Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 6.

24.—(1.) Land acquired by purchase or in exchange, or § 24. on partition, shall be made subject to the settlement in manner directed in this section. Settlement of land purchased, taken in exchange, &c.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the

§ 24. uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid ; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in the person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

Settlement of purchased lands. This section follows very closely the provisions usually inserted in "real" settlements for the purpose of making the purchased lands subject to the trusts of the settlement : see *Dav. Conv.* iii., 1020, 3rd ed.

Sub-s. 2. Freeholds. There are some dangers incurred by a referential settlement which cannot well be avoided. For example, if the trustees of the portions term be dead, no new term will be created by a conveyance to the

ses of the settlement ; and in like manner, if the tenant for life has sold or mortgaged his interest, the legal estate in the purchased land will pass to the tenant for life and not to the assignee : Lewin, 458, 7th ed. § 24.

As to the effect of a conveyance to the uses of a will, where a recovery had been suffered by a tenant in tail, see *Wortham v. Mackinnon*, 4 Sim. 485 ; 8 Bing. 564 ; and it seems that if a tenant in tail converts his estate into a base fee, or an estate in fee simple, a subsequent conveyance to the uses of the settlement would vest in him a like estate in the purchased lands.

The words, "but not so as to increase or multiply charges or powers of charging," are still retained, *ex abundanti cautela*, to prevent a conveyance to uses giving, for example, to the widow a second jointure rent-charge, or to the portionists a second set of portions out of the newly acquired lands : see Williams on Settlement, p. 222. It has been laid down that "it is not a reasonable way of reading a trust, created by reference to other trusts, to consider everything as there repeated, and so to make it a duplication, as it were, of trusts in the nature of charges." *Per* Lord Cranworth, L. C., in *Hindle v. Taylor*, 5 D. M. & G. 577, at p. 594.

The proviso in this sub-section, that leaseholds shall not vest absolutely in a tenant in tail by purchase who dies under twenty-one, corresponds closely with the common form : Dav. Conv. iii., 1131, 3rd ed. See also the Conv. Act, 1881, s. 42. An omission in the corresponding clause in Lord Cranworth's Act (23 & 24 Vict. c. 145, s. 4, repealed by s. 64, *post*) is here supplied by a gift over of the leaseholds on the death of the infant tenant in tail. Sub-s. 3.
Leaseholds.

Chattels cannot be entailed ; and, if they were subjected to the same limitations as freeholds, they would vest absolutely in the first tenant in tail. The object of the present clause is to keep the freehold and leasehold estates together as long as possible. See Jarman on Wills, ii., 577, 4th ed. The words *by purchase* are rendered necessary by the rule against perpetuities ; for it is conceivable that there should be an indefinite series of tenants in tail all dying under twenty-one, in which case the vesting of the chattels would be clearly postponed beyond the legal limit. Jarman on Wills, i., 274, 4th ed. ; *Christie v. Gosling*, L. R. 1 H. L. 279 ; *Harrington v. Harrington*, L. R. 5 H. L. 87 ; *Martelli v. Holloway*, *Ibid.*, 532.

Sub-sections (4) and (5) must be read together, and their combined effect seems to be that when the charge affects the whole property (both what is sold and what is retained), then the land acquired may in all cases be made subject to the charge ; but when a part only is charged, the land acquired is not to be made a substituted security, unless it is bought with the proceeds of sale of land formerly subject to the charge. The obvious intention seems to be, to provide that Sub-s. 4,
5.
Substi-
tuted
securities.

§ 24. when any part of the settled land is withdrawn from a security, an equivalent may be given to the mortgagee in the shape of the land acquired in its place.

The provisions of sub-s. 5 do not seem to be in harmony with those of s. 5, *ante*, under which the tenant for life may transfer incumbrances from one part of the estate to another. That section, indeed, would seem to enable a tenant for life to evade the restriction here imposed, and, by means of a previous fictitious sale, to charge the incumbrance on the whole of the settled land.

By s. 20 (2) a sale of settled land must be made subject to charges for money actually raised. The present clauses show that the tenant for life and the owner of the charge may concur in a sale free from incumbrances.

It must be observed that in many cases "capital money arising under the Act" will be a mixed fund, coming from several sources, and that, if it is desired to charge the purchased land under this section, evidence should be preserved that the purchase-money was *wholly* provided by the land formerly subject to the charge.

It is also important to observe that when capital money, which has not arisen from the sale of land (*e.g.* fines on leases), is invested in the purchase of land, there is no power to subject the last-mentioned land to any charge or incumbrance.

Sub-s. 6. Sub-s. 6 seems to indicate that the conveyance may be taken direct
**Conveyance to mort-
gagee.** to the mortgagee or other incumbrancer, and subject thereto to the uses of the settlement.

For form of conveyance to the uses of a settlement, see p. 162, *post*.

VII.—IMPROVEMENTS.

Improvements with Capital Trust Money.

§ 25. **25.** Improvements authorized by this Act are the making
**Description of improve-
ments authorized
by Act.** or execution on, or in connexion with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses :
- (ii.) Irrigation ; warping :

- (iii.) Drains, pipes, and machinery for supply and § 25.
distribution of sewage as manure :
- (iv.) Embanking or weiring from a river or lake, or
from the sea, or a tidal water :
- (v.) Groynes ; sea walls ; defences against water :
- (vi.) Inclosing ; straightening of fences ; re-division
of fields :
- (vii.) Reclamation ; dry warping :
- (viii.) Farm roads ; private roads ; roads or streets
in villages or towns :
- (ix.) Clearing ; trenching ; planting :
- (x.) Cottages for labourers, farm-servants, and
artisans, employed on the settled land or
not :
- (xi.) Farmhouses, offices, and out-buildings, and
other buildings for farm purposes :
- (xii.) Saw-mills, scutch-mills, and other mills, water-
wheels, engine-houses, and kilns, which will
increase the value of the settled land for
agricultural purposes or as woodland or
otherwise :
- (xiii.) Reservoirs, tanks, conduits, watercourses,
pipes, wells, ponds, shafts, dams, weirs,
sluices, and other works and machinery for
supply and distribution of water for agri-
cultural, manufacturing, or other purposes,
or for domestic or other consumption :
- (xiv.) Tramways ; railways ; canals ; docks :
- (xv.) Jetties, piers, and landing places on rivers,
lakes, the sea, or tidal waters, for facilitating
transport of persons and of agricultural
stock and produce, and of manure and other
things required for agricultural purposes,
and of minerals, and of things required for
mining purposes :
- (xvi.) Markets and market-places :
- (xvii.) Streets, roads, paths, squares, gardens, or
other open spaces for the use, gratuitously

§ 25.

or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land :

- (xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects afore-said :
- (xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines :
- (xx.) Reconstruction, enlargement, or improvement, of any of those works.

**Improve-
ments.**

This section extends in several important particulars the list of "improvements" in "The Improvement of Land Act, 1864" (27 & 28 Vict. c. 114), s. 9.

All the works there enumerated are comprised in this section, and, in addition, we find that provision is made for the distribution of sewage manure, for groynes and sea walls, artisans' cottages, docks, markets, and market-places, streets and open spaces in connexion with a building scheme, and trial pits for mines. Further, the former Act was wholly confined to agricultural purposes, whereas the works mentioned in clause xiii. may be undertaken for manufacturing, or other purposes; and those in xv. for facilitating the transport of minerals as well as of agricultural stock.

"Planting," in clause ix., is not confined as in the former Act to "planting for shelter." Several of these improvements are such as might best be undertaken in conjunction with other landowners; and accordingly by s. 27, *post*, power is conferred on the tenant for life, as by the Land Improvement Act, s. 12, to join or concur with other persons in the execution of the improvements. It is important to observe that all the improvements enumerated in this section are more or less connected with the development of an estate; and that repairs of the mansion house (*Donaldson v. Donaldson*, 3 Ch. D. 743), or of any other building on the property, *Drake v. Trefusis*, L. R. 10 Ch. 364, cannot be effected under the Act. Some of the purposes of this section were formerly, by a strained interpretation of the words, "purchase of other hereditaments," effected under the Settled

Estates Act. See *Re Newman's S. E.*, L. R. 9 Ch. 681, and the cases there referred to, and also *Re Leadbitter*, 30 W. R. 378. § 25.

In *Re Poynder*, 30 W. R. 7, the Court declined to sanction a scheme for draining an agricultural estate, but directed a reference to Chambers under 8 & 9 Vict. c. 56. Such a scheme might now be carried into effect under this Act.

The cost of "fencing" was thrown upon capital in *Cowley v. Wellesley*, L. R. 1 Eq. 656.

It will be remembered that, under the Public Money Drainage Acts, limited owners may obtain Government loans for drainage works, but as such loans are repayable by a rent-charge of £6½ per cent. in twenty-two years, the machinery of the present Act is clearly more advantageous to the tenant for life; and, for the same reason, the Improvement of Land Act (extended by s. 30, *post*) will be only adopted when capital money is not available for the purposes of this section. That Act was extended by the Limited Owners Residences Acts (33 & 34 Vict. c. 56, and 34 & 35 Vict. c. 84), so as to include in the list of "improvements" the erection, completion, or improvement of a suitable mansion-house, but its cost was limited to two years' rental of the estate. Under the present Act no similar power is conferred; and, independently of statutory authority, the Courts are not accustomed to sanction an expenditure of this kind unless clearly for the benefit of all parties concerned: *Hibbert v. Cooke*, 1 S. & S. 552; *Dent v. Dent*, 30 Beav. 363. The residuary personal estate settled on the same trusts as the real estate will not be applied in rebuilding a mansion-house: *Dunne v. Dunne*, 7 D. M. & G. 207; nor will the tenant for life be declared entitled to a charge for moneys expended by him in that manner: *Horlock v. Smith*, 17 Beav. 572; *Caldecott v. Brown*, 2 Hare 144; see also *Dixon v. Peacock*, 3 Drew. 288.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon. § 26.

Approval
by Land
Commis-
sioners of
scheme for
improve-
ment and
payment
thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment of the whole or part of any work or operation comprised in the improvement, on—

§ 26.

- (i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on
- (ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on
- (iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

**Approval
of scheme.**

The marginal note is misleading, and furnishes a standing memorial of the changes which the clause underwent in Committee. The scheme for improvement is not to be approved by the Land Commissioners, but by the trustees or the Court. The duties of the commissioners are not discretionary but ministerial, and are confined to seeing that the work has been properly executed and certifying what sum is to be paid in respect thereof.

It is important to observe that the work, or at least so much as is to be paid for, must be executed before the money is paid; and that there is no power to advance money to the tenant for life to be expended by him in improvements. But the preliminary costs of preparing the scheme, including surveyor's charges, seem to be pay-

able, under s. 21 (x.), as " incidental to the execution of the provisions of the Act ;" and may accordingly be defrayed by the trustees out of any capital moneys in their hands. **§ 26.**

Where the money to be expended is in the hands of trustees, it is highly important that they should accurately follow the course of procedure here prescribed, which consists of the following steps :—

- (1.) The scheme must be submitted to the trustees and approved by them.
- (2.) The works must be executed.
- (3.) A certificate of the commissioners, or of an engineer or surveyor, nominated by the trustees, and approved by the commissioners or by the Court, or an order of the Court must be obtained, as an authority for the trustees to pay over the money to the tenant for life.

The procedure, where the money is in Court, follows the same lines ; the Court, however, taking an unfettered discretion as to the evidence which it will accept in proof of the execution of the works.

It is to be observed that the scheme must be approved by the " trustees of the settlement," and therefore where money is in the hands of trustees (*e.g.*, under s. 33) who do not come within the definition of " trustees of the settlement" in s. 2, *ante*, they should be appointed to that office before undertaking the duties imposed by this section. See as to the appointment of " trustees of the settlement," s. 38, *post*.

In proceedings under the Improvement of Land Act, 1854, the Improvement-commissioners, before giving their sanction, must be satisfied that a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon will be effected by the proposed works (27 & 28 Vict. c. 114, s. 25). The discretion of the trustees and the Court is not similarly fettered under this Act. Improve-
ment of
Land Act.

For form of summons, see p. 182, *post*.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof. **§ 27.**
Concur-
rence in
improve-
ments.

Compare with this section the similar provisions in the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), s. 12. This section seems to be defective in not authorizing the trustees of the settlement to apply capital money in payment for the joint improvement ; and in not providing for the apportionment of the cost between the several estates. Concur-
rence in
improve-
ments.

The scheme for the whole work, whether it is an artificial harbour, a railway, or a system of " arterial drainage," must, it is conceived,

§ 27. be submitted to the trustees or the Court, and approved in the manner pointed out in the last section.

It is clear that the tenant for life may join or concur with the limited owners of other settled estates, or with persons absolutely entitled in the execution of joint improvements under this Act : but there is no power to proceed partly under this Act, and partly under the Improvement of Land Act. The former requires the expenses to be defrayed out of capital money in Court or in the hands of trustees, while the latter contemplates the money being raised by way of loan to be secured as a terminable charge ; and in the case of a joint application requires "the sum to be charged in pursuance of any joint application, so that a separate and distinct sum may become charged on the land of each landowner : " s. 12.

§ 28. **28.—(1.)** The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act ; and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

Obliga-
tion on
tenant for
life and
successors
to main-
tain, in-
sure, &c.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not

so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid. § 28.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

The obligation to maintain, repair, and insure is imposed upon the limited owners of settled land by the certificate of the Land Commissioners. Where the improvements are effected without their intervention, as for example when the money is in Court and the order for payment is made on the report of a surveyor, a special application will have to be made to the Commissioners to issue a certificate under this section, if it is desirable to impose the obligation upon the tenant for life. In the absence of any such certificate, the relative rights and liabilities of the tenant for life, remaindermen, and trustees seem to stand on the same footing as if the improvements had been effected before the settlement. Thus, if the legal estate be in the trustees, the Court will not, unless there is an express trust to repair, interfere at the instance of a remainderman, in cases of permissive waste, against an equitable tenant for life in possession: *Powys v. Blagrove*, 4 D. M. & G. 448; in which case Lord Cranworth, L. C., said, "whatever be the legal liability, this Court has always declined to interfere against mere permissive waste;" and he intimated that the legal liability was very doubtful, referring to *Gibson v. Wells*, 1 N. R. 291; *Herne v. Benbow*, 4 Taunt. 764. See, however, the judgment of Lush, J., in *Woodhouse v. Walker*, 5 Q. B. D. 404, and notes to *Green v. Cole*, 2 Wms. Saund. 251. Possession will not be withheld by the Court from the tenant for life, in order to impose terms as to repairs: *Warren v. Rudall*, 1 J. & H. 1.

Where an obligation to repair is imposed by the settlement (*Re Skingley*, 3 M. & G. 221; *Woodhouse v. Walker*, *ubi supra*), or a contract or covenant to that effect is entered into by the tenant for life (*Marsh v. Wells*, 2 S. & S. 87), the tenant for life or his personal representatives will be liable for dilapidations.

It would seem to be the better opinion that, where the limitations are legal, the remainderman has a right of action under the

§ 28. statute of Marlebridge against the tenant for life in respect of permissive waste. See *Woodhouse v. Walker*, 5 Q. B. D. 404.

Insurance.

The position of the tenant for life as regards insurance has been thus stated. "Though, in the absence of special contract or obligation, the tenant for life is not bound to rebuild in case of fire, and by parity of reasoning is not bound to insure, yet it seems that if he insured he would be bound to lay out the insurance money in rebuilding:" Dav. Conv. iii. 290 (e), 3rd ed. But the remainderman has in such a case no lien on the insurance moneys: Bunyon on Fire Insurance, 196, 2nd ed. If the tenant for life, however, is bound to insure by an order of the commissioners made under this section, his position would appear to be different from that of a tenant for life who voluntarily effects an insurance; and the insurance must be taken to have been made for the benefit of all parties: *Seymour v. Vernon*, 16 Jur. 189; and see *Norris v. Harrison*, 2 Mad. 268. As to insurance by trustees, see Lewin, 506, 7th ed. And for the most recent enunciation of the doctrine that fire insurance is a contract of indemnity, see *Rayner v. Preston*, 18 Ch. D. 1; *Castellain v. Preston*, 8 Q. B. D. 613.

Where improvements have been effected under the Improvement of Land Act, 1864, the person for the time being bound to make the periodical payments in respect of the charge is bound to uphold the improvements and works, and insure buildings "susceptible of damage by fire" in an amount equal to the principal sum originally charged. He is further made liable to an action for any damage occasioned by his default; and machinery is provided whereby the commissioners can enforce the maintenance of the improvements: 27 & 28 Vict. c. 114, ss. 72-76.

Sub-s. 2.
Cutting
down trees.

Trees planted as an improvement are by sub-s. 2 protected to a greater extent than *ornamental* timber, or even the principal mansion house; for it will be observed, that a tenant in tail, who may commit with impunity every species of waste (Co. Litt. 224, a.), is here forbidden to cut down these trees. As to the disposition of the proceeds of sale of timber wrongfully cut, see *Seagram v. Knight*, L. R. 2 Ch. 628; *Higginbotham v. Hawkins*, L. R. 7 Ch. 676; *Honywood v. Honywood*, L. R. 18 Eq. 306; *Baker v. Sebright*, 13 Ch. D. 179.

Sub-s. 3.
Land
Commis-
sioners.

The duties of the Commissioners prescribed by a. 26 end with their report on the works; by this sub-section they are constituted overseers of the improvements during the continuance of the settlement. It is not stated what steps are to be taken by them for the protection of the estate in the event of the works being dilapidated, or the buildings uninsured; but it is to be presumed that they may issue a certificate under sub-s. 1, whereupon a right of action will under sub-s. 5 accrue to the persons entitled in remainder.

The provisions of the Improvement of Land Act, 1864, s. 75, whereby the Commissioners are empowered after default to execute

repairs, are not applicable to the present case, even if incorporated by **§ 28.**
 a. 58, *post*.

The contents of the certificate under this section are not expressed to extend beyond a specification of the *period* during which the tenant for life is to maintain the works, and the *amount* in which he is to insure; and by this sub-section the term may be shortened, or the amount diminished: but the language seems to imply that the certificate is intended to contain more elaborate provisions than are above referred to with reference to the maintenance of the works.

Sub-s. 4.
 Varying
 the certi-
 cate.

It is to be observed that under this sub-section a right of action is conferred upon everybody, "having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion;" and it may be a question what damages are recoverable in such an action—are they the total injury to the inheritance? and if so, how are they to be impounded for the benefit of "the persons entitled under the settlement?" or, must each successive remainderman bring an action for his own apportioned damage? Note also the absurdity (produced by amendments in the passage of the bill through the House of Commons) of a right of action being conferred against the tenant for life in respect of defaults committed by any of his "successors as aforesaid."

Sub-s. 5.
 Right of
 action.

The second part of the clause is obscure, since it does not appear whether there is a right of action against the executors or administrators of the tenant for life, or whether there is conferred merely a right to prove for the "damages." By 3 & 4 Will. 4 c. 42, s. 2, actions may be brought against the executors of the wrongdoer for an injury to property real or personal, but the injury must have been committed within six months of the person's death, and within six months after administration has been taken out. See *Woodhouse v. Walker*, 5 Q. B. D. 404, where it was laid down, that "the proper measure of damages in an action against executors for non-repair is the sum which is reasonably necessary to put the premises in the state of repair in which the tenant for life ought to have left them."

Semble, where the estate of the tenant for life is insolvent, proof cannot be made in respect of these unliquidated damages, since they arise "otherwise than by reason of a contract," and would therefore not be provable in bankruptcy: 32 & 33 Vict. c. 71, s. 31; and Jud. Act, 1875, s. 10. See also *Re Newman*, 3 Ch. D. 494.

Execution and Repair of Improvements.

§ 29.

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed

Protection
 as regards
 waste in
 execution

§ 29. and repair of improvements. by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Waste in execution and repair of improvements. This section applies only as between the persons successively entitled under the settlement. If the land is in the occupation of tenants, the improvements must be executed with their consent. The power conferred "to enter on the Settled Land" seems unnecessary, as the tenant for life is presumed to be in occupation thereof.

The powers of the tenant for life may by s. 58, *post*, be exercised by tenants in tail and other limited owners when in possession; and it would seem, from "successors in title" being here specially mentioned, that the present section intends to confer upon them a right to enter and inspect, maintain, and repair the works, even while their estates are reversionary.

As to ornamental timber, see Brickdale on the Settled Estates Act, 127; Craig on Trees. Compare this section with the analogous provisions of s. 34 of "The Improvement of Land Act."

As to the protection afforded by the Court to timber "left standing for shelter or ornament," see Dav. Conv. iii., 299, 3rd ed.; White & Tudor's L. C. in Eq. i., 806, 5th ed.

Improvement of Land Act, 1864.

§ 30. Extension of 27 & 28 Vict. c. 114, s. 2. 30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act.

The Improvement of Land Act, 1864, the scope of which is here **§ 30.** extended, enables limited owners to effect loans for the improvement of settled estates. But as these loans are repayable, by instalments of mixed principal and interest, in, at most, 25 years, the terms are not as advantageous as those provided by the present Act. Still, there may be cases in which it is not possible or convenient to raise, by a sale of part of the property, capital money for improvements under this Act; and it therefore seems expedient to indicate briefly the manner in which that object may be effected by a loan under the Improvement of Land Act. The procedure is as follows:—If a “land-owner” (s. 8) desires to borrow money for an “improvement” (s. 9), he applies to the Inclosure Commissioners (now the Land Commissioners, s. 48, *post*) for their sanction (s. 11); who after investigation (s. 15), may, if satisfied that the proposed improvement will effect a permanent increase of the yearly value of the land, exceeding the yearly amount of the charge, make an order sanctioning the improvement, and specifying the number of years, not exceeding 25, in which the loan is to be repaid by half-yearly instalments. The order sanctioning an improvement is called a “Provisional Order,” and confers a right on the completion of the works to an “absolute order,” which the commissioners are empowered (s. 49) to execute, charging the inheritance with the repayment of the loan by a rent-charge for the term of years mentioned in the provisional order, so as to repay principal and interest by half-yearly instalments (s. 51). The money is generally provided by the Land Improvement Companies, to whom the benefit of the charge is assigned (s. 53).

Improvement of Land Act, 1864.

The Act contains elaborate provisions as to security for expenses, maintenance of improvements, saving clauses and other matters to which it is unnecessary further to refer, as its importance is greatly diminished by the facilities conferred upon limited owners by the present Act.

The Improvement of Land Act has been also extended by former **Previous** statutes, so as to include as “improvements” the following works:— **extensions**

- (1.) A suitable mansion-house and offices; but only two years’ rental of the settled land can be expended. This, however, means the rental of the whole of the settled land, and not merely that part on which the house is to be built: *Re Dunn’s S. E.*, W. N. 1877, 39. See the Limited Owners’ Residences Acts, 1870 & 1871, 33 & 34 Vict. c. 56; 34 & 35 Vict. c. 84. **of the Improvement of Land Act.**
- (2.) Sewage works under “The Public Health Act” (38 & 39 Vict. c. 55), s. 31.
- (3.) Reservoirs and other works for the supply of water under 40 & 41 Vict. c. 31.

§ 31.

Power for
tenant for
life to
enter into
contracts.

VIII.—CONTRACTS.**31.—(1.) A tenant for life—**

- (i.) May contract to make any sale, exchange, partition, mortgage, or charge; and
- (ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and
- (iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and
- (iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and
- (v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and
- (vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being

of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself. § 31.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

“Contracts are considered as defective executions, and like them require a sufficient consideration to enable the Court to act. The same rules, therefore, apply to each case. As against a remainderman both are equally binding. The principal distinctions between them are, that a contract to execute a power might be enforced against the donee of the power himself, where a defective execution without any contract, although capable of being enforced against a remainderman, could not be aided against the party who made it:” Sugden on Powers, 552, 8th ed.; *Re Dyke's Estate*, L. R. 7 Eq. 337.

Although, under the general law, the tenant for life might have entered into binding contracts to exercise the powers of the Act, yet the safer course has been here followed of expressly authorizing him to do so; and it may be observed that, by virtue of s. 19, *ante*, the tenant for life of an undivided share may concur with the owners of the other shares in a joint contract for the sale of the property as a whole.

It will be noticed that “enfranchisement” is not expressly mentioned in this clause; but it seems to be virtually included in “Sale.” Sub-s. 1.
Enfranchisement.
See s. 3, *ante*, p. 31.

As to the power of trustees for sale to vary or rescind contracts, buy in at an auction, and re-sell, see Conv. Act, 1881, s. 35; and as to the fiduciary position of the tenant for life in the exercise of the statutory powers, see s. 53, *post*. Power of trustees to vary contracts.

If a purchase goes off through default of the purchaser, the vendor may retain the deposit, whether there is a condition to that effect or not: *Depree v. Bedborough*, 4 Giff. 479; *Ex parte Barrell*, L. R. 10 Ch. 512; and see *Essex v. Daniell*, L. R. 10 C. P. 538; *Best v. Hamand*, 12 Ch. D. 1. But, if the vendor cannot make a title, then the deposit must be returned with interest at 4 per cent.: *Turner v. Marriott*, L. R. 3 Eq. 744; *Want v. Stallibrass*, L. R. 8 Ex. 175.

§ 31.

A forfeited deposit would seem to be within the spirit of this clause, and to be "capital money arising under the Act." See *Shrewsbury v. Shrewsbury*, 18 Jur. 397, where it was held that a tenant for life was not entitled to retain a deposit, but that it belonged to the settled estates.

- iii. Leases. "Except when the commencement of the term to be granted is postponed, and depends upon the previous completion of something stipulated to be done, it can seldom be advisable for either lessor or lessee to allow their respective rights to depend upon an agreement in the place of a duly executed lease": Dav. Conv. v. part. i. 18, 3rd ed.

The principal application of this clause will be in the case of building agreements, as to which see s. 8 (3) and note thereto p. 47.

Where a tenant entered under an agreement for a lease the lessor could not formerly, during the first year, distrain for rent: *Hegan v. Johnson*, 2 Taunt. 148; and see *Adams v. Hagger*, 4 Q. B. D. 480; but by the Judicature Act, 1873, the position of the tenant has been completely changed, and he now holds under the agreement, as if a lease had been granted, properly framed in pursuance thereof: *Walsh v. Lonsdale*, 26 Sol. Jour. 346.

The tenant for life may, of course, enter into a provisional contract, subject to the approval of the Court, to grant such a lease as is mentioned in s. 10, *ante*, p. 51.

iv. Surrenders.

As to the terms on which the tenant for life may accept surrenders of leases, see s. 13, *ante*, p. 57.

v. Improvements.

The list of "improvements" will be found in s. 25, and the manner in which they are to be executed is described in s. 29.

Sub-s. 2. Specific performance.

"The general rule with regard to suits to enforce contracts is, that the parties to the contract or their representatives are the necessary and sufficient parties to the suit:" Fry, Sp. Perf. 62.

Under this section the right of action, so to speak, runs with the estate; and neither the executors of the tenant for life, nor the trustees of the settlement, need be made parties.

Independently of this section it seems to be settled that a remainderman is bound by the contract of a tenant for life made *pursuant to his power*: *Shannon v. Bradstreet*, 1 Sch. & Lef. 52. *Secus*, if the terms of the contract are not authorized by the power: *Ricketts v. Bell*, 1 De G. & S. 335.

"Where the contract to execute the power is merely by parol or the written agreement is not effectual under the Statute of Frauds, it seems that it will not bind the remainderman, *although it is in part performed* by the intended appointee": Sugden on Powers, 554, 8th ed. See *Blore v. Sutton*, 3 Mer. 237; but acquiescence will prevent the remainderman from repudiating the contract: *Stiles v. Cowper*, 3 Atk. 692.

It seems doubtful, when the contract is not in conformity with the Act, whether the purchaser or lessee can compel specific performance, with compensation for what he loses by the contract being reduced to conformity. See on the general law as to specific performance with compensation, the notes to *Seton v. Slade*, Leading Cases in Equity, ii. 531, 5th ed. § 31.

It will be remembered that, under s. 58, the powers of the tenant for life may be exercised by tenants in tail in possession ; and a difficulty seems to arise as to the contracts of such persons where they die before completion, and without having barred the estate tail. Contracts by tenants in tail.

A contract by a tenant in tail may be specifically enforced against him, but not against a succeeding tenant in tail : *Att.-Gen. v. Day*, 1 Ves. sen. 218, even where a decree had been made against the predecessor : *Frank v. Mainwaring*, 2 Beav. 115 ; and a conveyance without a disentailing assurance will in general pass a fee determinable by the entry of the issue : *Sturgis v. Morse*, 2 D. F. & J. 223. The 40th section of the Fines and Recoveries Act recognises the established law by enacting that no disposition by a tenant in tail resting only in contract shall be of any force at law or in equity under the Act, notwithstanding such disposition shall be made or evidenced by deed. But it is clear, that if contracts of a tenant in tail are binding by virtue of this section, which they seem to be, the provisions of the Fines and Recoveries Act as to enrolment are to some extent swept away by a side wind.

Every application to the Court may be made by petition, or by summons at Chambers, s. 46 (3) ; and under this section specific performance or rescission of the contract may, it seems, be obtained in this summary manner. See also the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9. For form of summons, see p. 181, *post*. Sub-s. 3. Directions by the Court.

Compare the provisions of sub-section 4 with the Conv. Act, 1882 (45 & 46 Vict. c. 39), s. 4, which enacts that "where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not for the purpose of the deduction of title to an intended assign form part of the title, or evidence of title, to the lease." It will be observed that the words in italics do not occur in this section, and their omission seems to extend its operation, so as to exclude in all cases the preliminary contract. See *Salaman v. Glover*, L. R. 20 Eq. 444 ; where the grant of light and easements in a lease was controlled by the words of the antecedent agreement. Sub-s. 4. Preliminary contract.

IX.—MISCELLANEOUS PROVISIONS.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, § 32.
Applica-
tion of

§ 32. 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

money in
Court
under
Lands
Clauses
and other
Acts.
8 & 9 Vict.
c. 18.
23 & 24
Vict. c.
106.
32 & 33
Vict. c. 18.
40 & 41
Vict. c. 18.

Applica-
tion of
money in
Court
under
other Acts.
Lands
Clauses
Acts.

The object of this section is to enable money in Court, which is liable to be invested in land under the provisions of any Act of Parliament, to be applied as if s. 21 of this Act were substituted for the investment clause of the Act under which it has been paid in.

The procedure, it will be observed, is not changed; and, accordingly, where the money has been paid in under the Lands Clauses Consolidation Acts, the order for re-investment must be made on the petition of the tenant for life (8 & 9 Vict. c. 18, s. 80), which should be served on the remaindermen: *Re Leigh's Estate*, L. R. 6 Ch. 887; unless the object is simply to re-invest in land: *Ex parte Staples*, 1 D. M. & G. 294; *Re Chambers' S. E.*, 26 Sol. Jour. 531. The petition should also, it seems, be served on incumbancers, two guineas being tendered them for their costs under Rules of Court (Costs), "Special Allowances" r. 17, with an intimation that if they appear they will be liable to pay their own costs: *Re Gore Langton's Estate*, L. R. 10 Ch. 328; *Ex parte Jones*, 14 Ch. D. 624; *Re Sutton*, 30 W. R. 657.

Costs.

Questions are not unlikely to arise as to what costs the company is liable to pay upon re-investment under this Act. Section 80 of the Lands Clauses Act, 1845, throws upon the company the costs of the purchase of the lands, interim investment, re-investment in other land, and of all proceedings relating thereto except such as are occasioned by adverse litigation; and it has been decided that under this section the costs of paying off incumbrances on other parts of the estate are not payable by the company: *Ex parte Earl of Hardwicke*, 17 L. J. Ch. 422; *Re Manchester, &c., Ry. Co.*, 21 Beav. 162; *Re Mark's Trusts*, W. N. (1877), p. 63; and under a local Act: *Re Lord Stanley of Alderley*, L. R. 14 Eq. 227. *Secus*, as to redemption of land tax: *Re Bethlem*.

Hospital, L. R. 19 Eq. 457 ; *Re Hospital of St. Katharine*, 17 Ch. D. 378. The company have also been held liable to pay the costs of applying the fund in the enfranchisement of copyholds : *Re Cheshunt College*, 1 Jur. N. S. 995 ; *Dixon v. Jackson*, 25 L. J. Ch. 588 ; *Re Wilson's Estate*, 11 W. R. 712 ; and in the erection of buildings, or permanent improvements : see *Ex parte Rector of Gamston*, 1 Ch. D. 477 ; *Ex parte Rector of Kirksmeaton*, 20 Ch. D. 203, and the numerous cases cited in Daniell's Ch. Pr. 1877, 5th ed. § 32.

It would seem, however, that the company cannot be called upon to pay the costs of schemes and certificates under s. 26 *ante*, p. 87 : see *Ex parte Rector of Shipton*, 19 W. R. 549.

Where the money is in Court under an Act which is silent as to costs, the Court has now by Ord. LV. of the Rules of 1875, full discretion as to supplying the omission : *Ex parte Mercers' Co.*, 10 Ch. D. 481 ; *Ex parte Hospital of St. Katharine*, *ubi supra*.

The proceeds of sale of an infant's or married woman's share of Partition real estate, sold under the Partition Act, and paid into Court, may be applied as capital money under this Act. See *Foster v. Foster*, 1 Ch. D. 588 ; *Mildmay v. Quicke*, 6 Ch. D. 553 ; *Mordaunt v. Benwell*, 17 Ch. D. 302.

See, as to costs under special Acts, Seton, 1449.

It is to be presumed that this section applies where the money has been invested in consols by way of interim investment, although, strictly speaking, there is in such a case no money in Court. See the Ch. Funds Consol. Rules, 1874 ; and as to interim investment, Seton, 1422.

The tenant for life should not, on a sale under the Lands Clauses Act, contract to exercise his powers under this Act without a special stipulation that the costs of re-investment should be borne by the company. See *Dart. V. & P.* 82, 5th ed.

For form of petition under this section, see *post*, p. 176.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act. § 33.

It is to be observed that the marginal note introduces the words "under powers of settlement," which do not occur in the section. The marginal note, however, cannot control the generality of the enactment : *Claydon v. Green*, L. R. 3 C. P. 511 ; *Attorney-General v. Great Eastern Ry. Co.*, 11 Ch. D. 449, 461, 465 ; but see *Re Venour's*

Special
Acts.

Interim
invest-
ment.

Contract
with com-
pany.

Application
of money
in hands of
trustees
under
powers of
settlement.

Money in
the hands
of trustees.

§ 33. *S. E.*, 2 Ch. D. 522, 525; and it seems that where money is included in the settlement and is vested in trustees upon trust for investment in land, to be held upon the same trusts as were declared of the settled land, it would be "capital money" under this section, in the same manner as money in their hands arising from the exercise of any of the powers of the settlement.

The trust for investment in land must, however, be imperative. If the trustees have an option of investing in land or on real security (*Atwell v. Atwell*, L. R. 13 Eq. 23), or if they have only a power with the consent of the tenant for life, to purchase land (*De Beauvoir v. De Beauvoir*, 3 H. L. Cas. 524), or if they have a discretion as to the time at which they will so invest (*Tempest v. Camoys*, 26 Sol. Jour. 645), it would seem that the section does not apply. *Seem*, the option hereby conferred upon the tenant for life is a "power" which may be exercised by tenants in tail and other limited owners under s. 58 *post*. It may be mentioned that, previously to this Act, the Court has occasionally allowed a personal fund, liable to be invested in land, to be applied in execution of permanent and substantial improvements: *Re Barrington's Settlement*, 1 J. & H. 142; *Re Lord Hotham's Trusts*, L. R. 12 Eq. 76; *Dav. Conv.* iii. 291, and cases there cited.

§ 34. **34.** Where capital money arising under this Act is purchased money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Money paid for lease or reversion. This section is analogous to s. 74 of the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18), and to s. 37 of the Settled Estates Act, 1877 (40 & 41 Vict. c. 18); but differs from both those enactments by authorizing the trustees of the settlement, as well as the Court, to

exercise the discretion which under them could be exercised by the Court alone. Where the purchase-money arises from the sale of a lease for years (and the same observation applies to other limited interests), the whole fund should be exhausted during the period of the lease, so as to give no benefit to the remainderman which he would not have derived from the unconverted leasehold. The object of this section "would clearly be attained by investing the money in the purchase of an annuity having as many years to run as there were years remaining in the term. If an annuity is not actually bought, it must be referred to an actuary to calculate what yearly sum, if raised out of the dividends and corpus of the fund, will exhaust the fund in the number of years which the lease had to run, and the amount so ascertained must be paid to the tenant for life : " Per Jessel, M. R. in *Askew v. Woodhead*, 14 Ch. D. 27, 34. This case, which follows *Re Phillips' Trusts*, L. R. 6 Eq. 250, and overrules *Re Pfleger*, *ibid.* 426, may be considered to have settled the principle on which the apportionment between tenant for life and remainderman should take place. See also *Ex parte Wilkinson*, 3 De G. & Sm. 633 ; *Jeffreys v. Conner*, 28 Beav. 328 ; *Re Money's Trusts*, 2 Dr. & Sm. 94.

The principle on which the purchase-money of a reversion is to be laid out is that the income of the tenant for life is not to be increased by the sale. Thus in *Re Wootton's Estate*, L. R. 1 Eq. 589, land subject to a building lease of which eleven years were unexpired was taken by a railway company, and it was ordered, that only so much of the dividends of the fund in Court should be paid to the tenant for life as would compensate her for the loss of rent, and that the residue should be accumulated till the end of the term. See also *Re Mette's Estate*, L. R. 7 Eq. 72 ; *Re Wilkes' Estate*, 16 Ch. D. 597.

Where renewable leaseholds are the subject of a settlement which contains an over-riding trust for renewal, the tenant for life will only be entitled on a sale to the actual income of the purchase-money, whether the leaseholds have ceased to be renewable or not : *Re Wood's Estate*, L. R. 10 Eq. 572 ; *Hollier v. Burne*, L. R. 16 Eq. 163 ; *Maddy v. Hale*, 3 Ch. D. 327 ; *Re Barber's S. E.*, 18 Ch. D. 624.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under

§ 34.

Lease.

Reversion.

Renewable leaseholds.

Cutting and sale of timber, and part of proceeds to be set aside.

§ 35. this Act, and the other fourth part shall go as rents and profits.

Cutting
and sale
of timber.

Unless the tenant for life is expressly made "dispunishable," he is liable for waste in respect of timber: *Lewis Bowles' Case*, Tudor's L. C. in Conv. 37.

This section confers on the tenant for life, by analogy to the provision as to mining rent in s. 11, *ante*, p. 52, an interest in the timber which he did not previously possess; for, when timber was ripe and fit for cutting, and was accordingly cut by the order of the Court, the practice was to invest the whole fund, and allow the tenant for life to receive the dividends: *Tooker v. Annesley*, 5 Sim. 235; *Seton 1259 et seq.* It may also be observed that the Court would not, on the application of a tenant for life, order timber to be cut merely because it was ripe, unless it was decaying or injuring the growth of other timber: *Seagram v. Knight*, L. R. 2 Ch. 628.

"Timber" properly signifies oak, ash, and elm, twenty years old and upwards, and in particular districts other trees are "timber" by local custom: *Honywood v. Honywood*, L. R. 18 Eq. 306; a case which may be also usefully consulted as to the rights of the tenant for life in respect of trees which are not timber.

The proceeds of sale being made "capital money" must follow the trusts of the settlement, and a tenant in tail, or a tenant for life dispunishable for waste, coming into possession of the estates, cannot obtain payment of the "timber money" as he otherwise might: *Lowndes v. Norton*, 6 Ch. D. 139.

It may be assumed that the tenant for life and trustees would not be justified, previous to the sale of the property, in selling the standing timber so as to give a fourth of the purchase-money to the tenant for life. See *Cholmeley v. Paxton*, 3 Bing. 207; *Cockerell v. Cholmeley*, 6 Bli. N. S. 120.

Where timber is wrongfully cut the Statute of Limitations begins to run against the remainderman from the time of the cutting: *Seagram v. Knight*, *ubi supra*; *Higginbotham v. Hawkins*, L. R. 7 Ch. 676. But if the timber money is misappropriated under this section, it will be, not a "wrongful act," but a breach of trust, and the remedy against the tenant for life and the trustees will not be barred by lapse of time.

§ 36. 36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged

Proceed-
ings for
protection
or recovery
of land
being or
alleged

to be subject to a settlement, and may direct that any § 36.
costs, charges, or expenses incurred or to be incurred in claimed as
relation thereto, or any part thereof, be paid out of prop- protection
erty subject to the settlement. or recovery
settled.

This section replaces s. 17 of the Settled Estates Act, 1877, which is repealed by s. 64, *post*, and extends the provisions of the repealed enactment so as to embrace not only proceedings for *protection*, but also for the *recovery* of settled land. For some useful remarks on the elasticity of the word "*protection*," see Middleton's Settled Estates Act, 24, 2nd ed. In *Re Earl De La Warr's Estates*, 16 Ch. D. 587, costs incurred by the tenant for life in defence of the settled estates, were, without reference to the Act, ordered to be defrayed out of capital; but the propriety of this order was doubted in *Re Twyford Abbey S. E.*, 30 W. R. 268; where costs incurred by the tenant for life in preventing the construction of a sewage farm, which would have amounted to a nuisance to the tenants of the estate, were ordered to be paid by the trustees, out of capital money in their hands. See also as to the costs of opposing a Bill in Parliament, *Re Earl Berkeley's Will*, L. R. 10 Ch. 56; *Re Nicoll's Estates*, W. N. (1878), 154.

For an order sanctioning proceedings, see Seton, 1505.

The application may be made either by petition or summons at chambers, s. 46 (3), *post*. As to the mode of raising costs, see s. 47, *post*, p. 117, and for forms of prayer for payment of costs, p. 189.

37.—(1.) Where personal chattels are settled on trust § 37.
so as to devolve with land until a tenant in tail by pur- Heirlooms.
chase is born or attains the age of twenty-one years, or so
as otherwise to vest in some person becoming entitled to
an estate of freehold of inheritance in the land, a tenant
for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

§ 37.

In *Fane v. Fane*, 2 Ch. D. 711, it was held by Malins, V.-C., that the Court had jurisdiction to order the sale of heirlooms for the purpose of paying off mortgages, where the sale was for the benefit of all parties. In *D'Eyncourt v. Gregory*, 3 Ch. D. 635, Jessel, M. R., seems to have considered that, unless the purchase-money was actually required for payment of debts, there was no power to make the order.

Under this section the Court has an absolute discretion in the matter, and will not, it is presumed, exercise it unless the sale will be advantageous to the remaindermen as well as the tenant for life.

X.—TRUSTEES.

§ 38.
Appoint-
ment of
trustees by
Court.

38.—(1.) If at any time there are no trustees of a settlement within the definition of this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

“The Trustees of the Settlement,” as defined in s. 2 (8), include the following persons :—

1. Trustees with power of sale of settled land :
2. Trustees with power of consent to or approval of the exercise of such a power.
3. The persons who are by the settlement declared to be trustees thereof for purposes of this Act.

The first two classes are, so to speak, *ex officio* trustees of the settlement ; and all persons, whether they were originally named in the settlement or were subsequently appointed, will be such trustees, if the power of sale or the power of consent remains vested in them.

In the case of an express nomination by the settlement, it is presumed that it may include "the said X. and Y., or *other the trustees for the time being* of these presents ;" but it must be observed that this form, if it can be adopted, coupled with the power of appointing new trustees, generally given to the tenant for life, throws into his hands a practically uncontrolled power of disposition. To put an extreme case, he may nominate two "men of straw" to be "trustees of the settlement," sell the property, and appropriate to his own use, or divide with his trustees the entire purchase-money. The interests of the remainderman would seem, in such an event, to be seriously compromised.

§ 38.

Although unnecessary petitions for the appointment of new trustees may be dismissed with costs (*Re Gibbon*, 30 W. R. 287; *Re Oakden's Trusts*, 26 Sol. Jour. 563); it is clear that in all cases under this Act, application *may* be made to the Court for the appointment of trustees; but the only case in which such an application *must* be made seems to be where there are no trustees of the settlement, and no power of appointing them: for example, if land is devised unto and to the use of trustees and their heirs, upon trust for A. during his life, &c., there being no power of sale in the will; or, if a devise is made directly to the beneficiaries in succession, without the interposition of trustees; or, if a new trustee is appointed to fill a vacancy, and the declaration in the settlement does not include "the trustees for the time being," in these cases the powers of the settlement cannot be exercised until a proper appointment has been made by the Court.

No trustees
of the
settlement.

It should be observed that express power is conferred by this section upon the Court of appointing new trustees, even where there are trustees of the settlement in existence; who might, if s. 31 of the Conv. Act, 1881, applies, make the appointment out of Court.

Although the "trustees of the settlement" are an artificially constituted body created by the Act for certain purposes, with certain statutory powers and duties, there seems no reason to doubt that they must be considered trustees within the general meaning of that term; see, however, s. 40, *post*. They do not, indeed, necessarily take any property as the subject of a trust; and would therefore seem not to fall within the Trustee Acts, 1850, 1852. See the definition of "trustee" in 13 & 14 Vict. c. 60, s. 2; and also the Conv. Act, 1881, s. 31 (4), and s. 32 (1).

Whether
"trustees"
for all
purposes.

The words "while continuing to be trustees or trustee," in sub-s. 2, make it clear that persons may cease to be trustees otherwise than by death.

The application under this section may be made either by petition or by summons at Chambers: s. 46 (3), *post*. By the same section discretionary power is given to the Court as to costs, charges,

§ 38. and expenses, which, as a general rule should be paid out of *corpus* : *Re Parby*, 29 L. T. 72 ; *Carter v. Sebright*, 26 Beav. 374.

In the case of an infant the application will be that of the guardian or next friend, and the infant need not be named as a party. Compare s. 60, *post*. As to the various kinds of guardians, see *Simpson on Infants*, 193-234 ; and for forms of appointment, *Seton*, 718, *et seq.*

Sub-s. 2.
Survivor-
ship.

Express provision is here made for the survivorship of the office of trustee of the settlement, a result which would, it seems, have followed, even if the Act had been silent on the subject. See *Bell v. Holtby*, L. R. 15 Eq. 178, where a sole survivor was held to be protector of a settlement under the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), s. 32.

Although the personal representatives of the last surviving or continuing trustee are constituted "trustees of the settlement ;" the section seems to contemplate their immediate removal ; and the question again arises whether they can exercise the powers of the Conv. Act, 1881, s. 31, for the appointment of their successors. See s. 30 of the same Act, which provides for the devolution of trust and mortgage estates.

For forms of applications for the appointment of trustees, see *post*, pp. 172, 174, 180.

§ 39. 39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

Number of
trustees to
act.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Number of
trustees. As to the various occasions on which capital money may arise under the Act, see *ante*, p. 11.

Semble, the appointment by the settlement of a single trustee would not enable capital money to be paid to him. In order to justify it, he must be expressly authorized by the settlement to receive capital trust money.

This enactment is analogous to the provisions in the Conv. Act, 1881, s. 31 (3), and s. 32 (1), their common object being to secure the trust funds from being at the disposal of a single trustee ; but although capital money may not be paid to fewer than two persons, there is nothing to prevent the sole survivor of the trustees from

dealing with investments under s. 21 (i.). See Lewin, p. 39, 7th ed., **§ 39.** where the reader will find an eloquent passage on the temptations of a sole trustee. See also *Baillie v. M'Kewan*, 35 Beav. 177. The Court always acts upon the principle involved in this section, and refuses to pay out money to one trustee: *Re Dickinson's Trust*, 1 Jur. N. S. 724; *Re Roberts*, 9 W. R. 758; or to appoint a single trustee where there were originally more than one: *Re Ellison's Trust*, 2 Jur. N. S. 62; *Re Porter's Trust*, 4 W. R. 417, 443; *Re Tunstall*, 15 Jur. 645.

See s. 45 (2), which requires that, when notice is given by the tenant for life under that section, the number of trustees shall be not less than two, unless a contrary intention is expressed in the settlement.

40. The receipt in writing of the trustees of a settle- **§ 40.**
ment, or where one trustee is empowered to act, of one Trustees'
trustee, or of the personal representatives or representative receipts.
of the last surviving or continuing trustee, for any money
or securities, paid or transferred to the trustees, trustee,
representatives or representative, as the case may be,
effectually discharges the payer or transferor therefrom,
and from being bound to see to the application or being
answerable for any loss or misapplication thereof, and, in
case of a mortgagee or other person advancing money,
from being concerned to see that any money advanced by
him is wanted for any purpose of this Act, or that no more
than is wanted is raised.

This section, which empowers the trustees of the settlement to give Trustees'
receipts for any money or "securities" (as to which see s. 2, *ante*), receipts.
extends, in the case of money payable by a mortgagee, the effect of
the receipt, so as to save all inquiries whether the money advanced is
actually required for the purposes of the Act.

A power to give receipts is, by the Conv. Act, 1881, s. 36, conferred
in the most general terms upon "any trustees or trustee;" and from
its being thought necessary to repeat here the provisions of that
section, some countenance is given to the notion that "trustees of the
settlement" are not trustees within the general meaning of the word.
The power in this section, it must be observed, is not confined to
"capital moneys arising under the Act," payable to them under s. 22,
but is perfectly general; and is not even limited by the words
"under any trust or power," which occur in the Conveyancing Act.

The receipt of a sole trustee will, of course, be ineffectual, unless he Sole
is "empowered to act," not only in the trusts of the settlement, but trustee.

§ 40. also in this particular matter of the receipt of capital money. See s. 39. It may be mentioned that capital money must always be paid alternatively to the trustees, or into Court, and that in the latter case the person making the payment is exonerated by s. 46 (2), *post*.

Position of mortgagee.

The cases in which money may be raised on mortgage are referred to in ss. 18 and 47; and, even independently of this clause, it would seem that the mortgagee would not have been bound to inquire whether all the money raised was wanted for the purposes of the Act or not: *Spalding v. Shalmer*, 1 Vern. 301; *Thomas v. Townsend*, 16 Jur. 736; Sugden, V. & P. 658, 14th ed.

The provision in Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 2, (repealed s. 64, *post*), relieving the purchaser from inquiry as to whether any particular re-investment was in the contemplation of the parties, is not repeated in this Act. See Dav. Conv. iii. 562, 3rd ed.; where it is said that if the provision is proper in the Act it should also have been inserted in private powers, a proceeding which was never thought necessary.

§ 41.

Protection of each trustee individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

This section is practically identical with the 31st section of Lord St. Leonards' Act (22 & 23 Vict. c. 35).

That enactment incorporates in every deed, will, or other instrument creating a trust the common indemnity clause, which, it may be observed, merely expresses the equitable doctrine of the Courts: Dav. Conv. iii. 246, 3rd ed. The learned authors of that work remark—and the observation is equally applicable to the present section—that “the protective effect of this rule must not be over-rated, as, though the acknowledgment of the trustee is not conclusive evidence of his having participated in the receipt of the money, it is a breach of trust to permit, without sufficient reason, the co-trustee alone to receive the money:” pp. 246–7.

Difference between receipts

It may be doubtful whether, having regard to s. 39, *ante*, a trustee will ever be justified in permitting money to be received by a single co-trustee; but in any case he ought not to allow it to *remain* in his hands for a longer period than the circumstances of the case reasonably

require : Lewin, 243, 7th ed. ; *Brice v. Stokes*, 11 Ves. 319 ; *Thompson v. Finch*, 22 Beav. 316 ; 8 D. M. & G. 560. See also the notes to *Townley v. Sherborne*, in *Leading Cases in Equity*, vol. ii. 914, 5th ed. Although a trustee "exercising reasonable care and diligence" is not liable for the loss arising from the failure of a banker or broker, yet if there is any irregularity in the course of dealing the trustee will not be relieved from responsibility. See *Clough v. Bond*, 3 My. & Cr. 490 ; *Matthews v. Brise*, 6 Beav. 239 ; *Re Speight*, 30 W. R. 785.

§ 41.

trust
money.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do ; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

§ 42.

Protection
of trustees
generally.

The indemnity here afforded to the trustees embraces three distinct matters :—(1.) Giving consents ; (2.) Inaction ; (3.) Propriety of dealings.

As to their powers of consent, see s. 15, relating to the alienation i. Consents. of the mansion house and park ; and s. 35 relating to the sale of timber by a tenant for life impeachable for waste.

By s. 45, *post*, notices of the intended exercise of the powers of the ii. Inaction Act must be sent to the trustees, and they may by s. 44 apply to the Court if they disapprove of the proposed transaction. But the present section seems to enable them to treat these notices with indifference, and in fact, by exonerating the trustees, sacrifices the interests of the remaindermen.

In relation to the purchase, exchange, and partition of settled land, iii. Pro-

§ 42. and the granting of leases, the trustees are indemnified with respect to matters over which, according to the scheme of the Act, they have no control. The tenant for life is empowered to enter into contracts (s. 31); to sell, exchange, make partition, and grant leases (ss. 3, 6), subject to the prescribed regulations (ss. 4, 7); to execute conveyances without the concurrence of the trustees (s. 20), and to direct the investment or application of capital money in such manner as he pleases (s. 22). The trustees are, therefore, very properly saved from any responsibility in respect of these matters. It should, however, be observed that there are several duties imposed upon the trustees which are not included in this protection clause.

Omissions in section. They are bound to invest or apply monies in their hands according to the direction of the tenant for life in any of the modes prescribed by s. 21, but this section confers an indemnity only in the case of the purchase of land. Again, the approval of a scheme for improvements (s. 26), the discretionary power of apportioning, between tenant for life and remainderman, the purchase-money of a lease or reversion (s. 34), and the onerous duties to be exercised by them on behalf of infants are not covered by this section. Lastly, it should be noticed that in the case of purchased land they are responsible to a certain extent for the form of the conveyance, which must "purport to convey the land in the proper mode."

§ 43. **43.** The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Trustees' reimbursement.

A provision similar to this section is contained in the 31st section of Lord St. Leonards' Act (22 & 23 Vict. c. 35), which is merely declaratory of the long-established rule.

The peculiarity of the position of "trustees of the settlement" is, that there may be no property vested in them, but they are not likely to incur any expenses except in connexion with the exercise of the powers of the Act, when, as a general rule, some capital money will be forthcoming from which they may deduct the expenses previously incurred. As to the expenses which a trustee is properly entitled to charge against the trust estate, see Lewin, Ch. XXXII. s. 2.

§ 44. **44.** If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter

Reference of differences to Court.

in difference, and respecting the costs of the application, as § 44.
the Court thinks fit.

The application may be made either by petition, or by summons at Chambers, s. 46 (3); and the object of the section seems to be to provide a summary mode of determining differences of *opinion* between the tenant for life and the trustees. The latter must, in all cases, receive notice under the next section of the intention to exercise any of the powers of the Act; and if they think that the proposed transaction will be injurious to the inheritance, they ought to bring the matter before the Court under this section. In "real" settlements, however, the trustees are mere shadows, and as they are protected by s. 42 from the consequences of inaction, it is probable that, in the great majority of cases, they will display their customary apathy, and neglect to set this machinery in motion.

A tenant for life will rarely, if ever, have to make an application under this section, as he can exercise all the powers of the Act independently of the trustees, and if necessary require capital money to be paid into Court instead of to them.

Hostile action does not seem to be comprehended in the mild term "difference;" and, accordingly, if the trustees desire to restrain a fraudulent sale, to enforce the maintenance, repair, or insurance of improvements (s. 28), or require an account of mining rent (s. 11), or timber monies (s. 35), they will have to institute an action for the purpose. It will be observed that the costs of the application are *Costs*. left to the discretion of the Court. See also s. 46 (6), *post*, and R. S. C. Order LV. A somewhat similar reference to the Court is provided for by s. 56 (3), *post*.

For form of Petition under this section, see *post*, p. 178.

45.—(1.) A tenant for life, when intending to make a § 45.
sale, exchange, partition, lease, mortgage, or charge, shall Notice to trustees.
give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

§ 45. (2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

Notice to trustees.

The intention of this section is, no doubt, to set the trustees upon inquiry as to the propriety of the proposed transaction; but the trustees not being liable for remaining passive (s. 42), and *bond fide* purchasers being expressly protected (sub-s. 3 and s. 54), the notices will probably in most cases be an empty formality.

It is also important to observe that the tenant for life is not bound to furnish any details; nor, indeed, would it be possible to do so "a month before the making of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same."

Although the trustees are not bound to take any steps upon receipt of the notice, their clear duty, if they consider the sale, &c., disadvantageous, is to bring the matter before the Court under s. 44.

The posting of the letters is sufficient for the purposes of this section, whether they are ever received or not. See *Household Fire Insurance Co. v. Grant*, 4 Ex. D. 216; *Carta Para Gold Mining Co. v. Fastnedge*, 30 W. R. 880.

The trustees have no power to waive any irregularity in respect of these notices, and if they receive capital money, or otherwise concur in a completed transaction, of which they have not received proper notice, they seem to incur some liability.

This section seems to recognise the existence of an "official solicitor," who is "an officer unknown to the law." Per James, L. J., in *Saffron Walden Building Soc. v. Rayner*, 14 Ch. D. 406.

Sub-s. 2.
Number of trustees.

If the number of trustees is reduced below two, the vacancies must be filled up under s. 38, *ante*, p. 106, before any step can be properly taken towards the exercise of the powers. See also s. 39, which prohibits capital money from being paid to fewer than two trustees.

Contrary intention.

Semble, the original appointment of only one trustee would amount to an expression of a contrary intention.

Sub-s. 3.
Protection of purchasers.

As to the general protection of *bond fide* purchasers, see s. 54, *post*, p. 127.

XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

§ 46.

Regulations re-

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating

the Court, be assigned to the Chancery Division of the Court. **§ 46.**

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

specting
payments
into Court,
applica-
tions, &c.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section 39 & 40 nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly.

Vict. c. 59.
44 & 45
Vict. c. 68.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is

§ 46. invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

Sub-a. 1. Compare the provisions of this section with those in the Conv. Act, 1881, s. 69. As to the classes of business assigned to the several divisions of the High Court, see the Judicature Act, 1873, ss. 33, 34.

Sub-a. 2. Wherever capital money arises under the Act, it may, at the option of the tenant for life, be paid to the trustees, or into Court (s. 22). **Payment into Court.** The trustees can give a discharge under s. 40; this sub-section effects the same purpose where the money is paid into Court.

As to the payment of money into the High Court, see the Ch. Funds Consol. Rules, 1874, rr. 25—35, Seton, 73—88; into the Court of Chancery of the County Palatine, see Consol. General Order XXXIX.; Snow and Winstanley's Practice, 447; and into the County Court, 30 & 31 Vict. c. 142, s. 24.

Sub-a. 3. For a list of applications which may be made to the Court under this Act, see *ante*, p. 9. It will be observed that, unlike the procedure under the Conv. Act, the application may be made by petition as well as by summons. As to the general procedure on petitions, see Daniell Ch. Pr. 1451, *et seq.*; Seton, 49 *et seq.*; and as to applications at Chambers, R. S. C. Order LIV.; Daniell, Ch. Pr. 1039, *et seq.* Forms of petitions and summonses will be found at the end of this volume.

Sub-a. 6. It must be observed that the provision as to costs is not limited to the costs of an "application," and the Court seems to have jurisdiction, for example, to order that the tenant for life should be paid out of *corpus* the charges and expenses incurred in preparing a scheme for improvements under s. 26.

See as to the costs of proceedings for protection or recovery of settled land, s. 36; of references to the Court, s. 44; and as to the payment of costs out of the property, s. 47, and the note thereon.

Sub-a. 10. As to the equitable jurisdiction of the County Courts, see 28 & 29 Vict. c. 99, under which those Courts, in administration of estates, execution of trusts, and other matters, have all the powers of the High Court, where the amount or the value of the property does not exceed £500. See also 30 & 31 Vict. c. 142, and as to the jurisdiction in Partition, 31 & 32 Vict. c. 40, s. 12.

Under this Act the jurisdiction is conferred by an alternative test of capital or annual value; and, as property of the annual rateable value of £30 may be worth more than £500, the County Court may have jurisdiction under this Act, although it could not administer the trusts of the settlement. A curious question would arise as to the validity of the order if the County Court sanctioned under s. 37 the sale of chattels which subsequently fetched more than £500. The matter not being "in progress" it could scarcely be transferred under the County Courts Act, 1865 (28 & 29 Vict. c. 99), s. 9 : *Birks v. Silverwood*, L. R. 14 Eq. 101. See *Thomson v. Flinn*, L. R. 17 Eq. 415 ; *Ward v. Wild*, 5 Ch. D. 779. It is also worth observing that there may be jurisdiction as to land, which would be ousted by an advantageous sale. § 46.

It seems that there is jurisdiction over capital money if the sum does not exceed £500, whatever may be the value of the unsold realty ; subject to this exception, however, that the County Court cannot in such a case direct the application of the money in "improvements," for that would be dealing with the land, as well as with the capital money.

The jurisdiction in the case of improvements would seem to be limited by the aggregate amount of the capital sum and the value of the land. As to the power of transfer from the County Court to the High Court, from one County Court to another, and from the High Court to a County Court, see 28 & 29 Vict. c. 99, ss. 9, 11 ; and 30 & 31 Vict. c. 142, s. 8.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of § 47.

Payment
of costs out
of settled
property.

- § 47.** the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Payment of costs out of settled property. This section provides machinery for raising costs, charges and expenses, both where they are payable out of *corpus*, and where they are thrown upon the tenant for life.

In the former case, besides the ordinary expedients of sale, mortgage and charge, they may be ordered to be paid out of the following funds :—

1. Capital money arising under the Act, which must be either in Court, or in the hands of the trustees (s. 22).
2. Money liable to be invested in land, which may be in Court under an Act of Parliament (s. 32), or in the hands of trustees under the powers of a settlement (s. 33).
3. Investments of *such* money. This seems to include the interim investment of money in Court (s. 32), and the investment of capital moneys mentioned in s. 21 (i.).

In cases where it is proper to throw the costs upon the tenant for life, they may be ordered to be paid—

1. Out of the income of any such money or investments as are specified above ; or
2. Out of any accumulations of income of *land*, money or investments.

It will be observed that the future income of money or investments may be impounded for this purpose, but that in the case of land, the section is expressly confined to accumulations ; and it seems that there is no power to direct a charge or mortgage of the life estate for the purposes of this section.

The manner in which costs are to be raised is here provided for ; the rights of the parties must depend upon the circumstances of each case and the nature of the application.

As to the costs of various applications authorized by this Act, see *ante*, pp. 52, 80, 100, and as to the power conferred on the Court of ordering them to be paid out of the property, see ss. 36, 46 (6) ; and it should be noticed that, under the latter section, a personal order for payment may be made in a proper case.

As to costs under the Settled Estates Act, see s. 41 of the Act, the "Settled Estates Act Orders, 1878," r. 29, Middleton, p. 129, 2nd ed. ; Seton, 1488, *et seq.*

For forms of prayer adapted to the various ways in which the

costs may be raised, see *post*, p. 189; and for form of mortgage to secure money advanced for payment of costs, *post*, p. 164. § 47.

48.—(1.) The commissioners now bearing the three § 48.
several styles of the Inclosure Commissioners for England
and Wales, and the Copyhold Commissioners, and the Tithe
Commissioners for England and Wales, shall, by virtue of
this Act, become and shall be styled the Land Commis-
sioners for England. Constitu-
tion of
Land Com-
missioners;
their
powers, &c.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or

§ 48. more, as the case may require, of the three several bodies of commissioners aforesaid.

27 & 28
Vict. c.
114.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

**Land Com-
missioners.** The three bodies of commissioners here united into a single commission, have long consisted of the same individuals, but acting under different styles, and using different seals.

The Tithe Commissioners were appointed by 6 & 7 Will. IV. c. 71; and the same persons were by 4 & 5 Vict. c. 35 appointed Copyhold Commissioners. The Inclosure Commissioners date from 8 & 9 Vict. c. 118; and, finally, by 14 & 15 Vict. c. 53, the three bodies were amalgamated, and it was enacted that the persons appointed under that Act should exercise all the powers of the former commissioners, and should adopt and use the style and seal of the body whose powers they were exercising. The powers and duties of these bodies have to be sought for in a number of Acts of Parliament which will be found collected in the Index to the Statutes under the headings "Tithes," "Copyholds," and "Inclosures" respectively.

**b-s. 6.
vers of** A question of considerable importance arises on the construction of sub-s. (6), viz.: Whether the Land Commissioners have for the

purposes of this Act the powers thereby conferred. This must be determined by the words of the section, interpreted by the necessities of the case ; and it is submitted that, if necessary, the words must be strained in order to effectuate the general object of the Act. § 48.
Commissioners.

In order to arrive at a satisfactory conclusion it is necessary to consider (1) the natural construction of the clause, (2) its applicability to the present measure, and (3) its legislative history.

On the mere question of construction it would seem that "any i. Construction of clause. Act passed or to be passed" is an expression deliberately selected so as to exclude the Act which speaks. But this difficulty can be got over ; for the Settled Land Act, although passed on the 10th August, 1882, speaks from the 1st January, 1883, the date of its commencement, and it may therefore be described in its own text as an "Act passed." The words "making provision for the execution of improvements on settled land," although properly applicable to the provision of "ways and means," may also, if necessary, receive a liberal interpretation. See s. 29, which provides for "the execution and repair of improvements."

As to the applicability of the clause to the present measure, it may ii. Application to this Act. be stated that without some such enactment s. 28 is unworkable ; but that a large number of provisions which have no possible application to this Act are here expressly incorporated.

It will be observed that, unless it is given by this section, no jurisdiction of any kind is conferred on the commissioners in relation to this Act. Their certificates and reports (see ss. 26, 28) are spoken of as if they were a body already charged with the superintendence of settled estates. No provision is made for their expenses of inspections, examinations, reports and certificates, and no fees are payable for documents issued from their office. On the other hand the provisions of the Improvement of Land Act, 1864, relating to their proceedings and inquiries, authentication of instruments, declarations, statements, notices, applications and forms, have very little, if any, bearing upon the present Act.

The difficulty is to a great extent solved (if this be a legitimate iii. History of clause. mode of interpreting an Act of Parliament) by reference to the former stages of the Bill, and it is in the first place to be observed that this section was at a late stage transferred from the Conveyancing Bill to the Settled Land Bill. This circumstance fully explains the expression "passed or to be passed," commented on above.

Moreover, in the Conveyancing Bills of 1880 and 1881, the "Settled Land Act" was expressly referred to, and the powers of the Improvement of Land Act were conferred on the commissioners for the purposes of that Act.

It is submitted therefore that this sub-section must be read as giving to the commissioners under this Act, all the powers of the

§ 48. Improvement of Land Act, so far as they are applicable, or necessary for the working of the present measure.

§ 49. **49.—(1.)** Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

Filing of
certificates,
&c., of
commis-
sioners.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

Filing
certificates,
&c.

See, as to certificates and reports of the commissioners, ss. 26, 28. The changes which the Bill underwent in committee explain the presence in this section of the word "approved," which has no application to any certificate or report mentioned in the present Act. Under s. 26, as it stood in the Bill, "the scheme for the execution of improvements," had to be approved by the commissioners, and this section provided for the filing of the "scheme," as well as of certificates and reports. The former section was amended so as to leave the approval of the scheme altogether to the trustees or the Court, and this section was consequentially amended by striking out the word "scheme."

The practical result is that the scheme need not be filed in the office, although in certain cases it may be convenient to do so.

Sub-s. 2.
Office
copies.

As to "office copies," see Starkie on Evidence, pp. 260—265; Taylor, 1288, 7th ed.

XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

§ 50. **50.—(1.)** The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

Powers not
assignable;
contract
not to
exercise
powers
void.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the

estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act. § 50.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

This and the next two sections endeavour to prevent the powers of the Act from being assigned, suspended, or extinguished, or in any manner rendered incapable of being exercised, whether by the action of the tenant for life, or the caprice of the settlor. Powers not assignable.

So far as regards the suspension and extinguishment of the powers, the saving clause in sub-s. (3) renders the present section to a great extent an expression of the existing law on the subject, which rests on the principle that a man cannot derogate from his own grant. Thus, a mortgage by the tenant for life cannot be affected by a subsequent exercise of his power of sale: *Goodright v. Cator*, Dougl. 460; and "a total alienation of the estate must operate as an extinguishment of the power, where it cannot be exercised without defeating the interest granted:" Sugden on Powers, 57, 8th ed., and see p. 70. "If tenant for life who hath power to make leases depart with his estate his power is gone:" *Berry v. White*, Bridg. 82, 91; *secus* if he conveys only by way of mortgage: *Ren v. Bulkeley*, Dougl. 292. It would seem, indeed, that, notwithstanding the passage cited from Lord St. Leonards' work, a total alienation does not legally extinguish any power; for it has been held that after bankruptcy (*Holdsworth v. Goose*, 29 Beav. 111; *Simpson v. Bathurst*, L. R. 5 Ch. 193), or a sale of the life interest by the assignees in bankruptcy (*Eisdale v. Hammersley*, 31 Beav. 255), or the absolute alienation of his estate by the tenant for life (*Warburton v. Farn*, 16 Sim. 625; *Alexander v. Mills*, L. R. 6 Ch. 125), powers of leasing or of sale could, with the concurrence of the assignees, be exercised by the tenant for life. Suspension or extinguishment.

The prohibition against a release of the powers, or a contract not to exercise them, introduces an exception to the well-established law Release of powers.

§ 50. as recently expressed in the 52nd sect. of the Conv. Act, 1881. See *West v. Berney*, 1 R. & My. 431; *Hurst v. Hurst*, 16 Beav. 372; *Isaac v. Hughes*, L. R. 9 Eq. 191. This section does not in terms extend to the case of a contract by a person who is not, at the date of such contract, a tenant for life; but who becomes so under a subsequent settlement.

It is to be observed that the Conv. Act, 1882 (which received the royal assent on the same day as the present measure), enacts, by s. 6, that a person may by deed *disclaim* a power; and a question may be raised as to whether the powers of a tenant for life under the Settled Land Act may be disclaimed, or whether the obvious intention of the present section is to prevail.

Tenant for
life bank-
rupt.

It would seem that where a tenant for life becomes bankrupt he cannot be called upon to exercise the powers for the benefit of his creditors; and it is observable that in some cases his estate would be directly benefited thereby, as in the case of mining leases (s. 11), and sale of timber (s. 35).

See as to the exercise of powers by the trustee in bankruptcy, "The Bankruptcy Act, 1869" (32 & 33 Vict. c. 71), s. 15 (4).

Under the Settled Estates Act, s. 23, the assignee of the tenant for life may apply to the Court to exercise the powers of the Act: *Re Hutchinson*, 14 L. T. Rep. 129; but the definition of "Settlement" in that Act contains the words, "including any such instruments affecting the estates of any *one* or more of such persons exclusively," which do not occur in "Settlement" as defined by this Act. An assignee, therefore, of the tenant for life, although beneficially entitled to possession, would not be so entitled *under the settlement*. See s. 2 (1), (5) *ante*, p. 22.

Resettle-
ment of
family
estates.

A curious question arises under this section where family estates are re-settled in the ordinary manner, viz:—Whether the powers of the former settlement do not continue so as to override all the provisions of the re-settlement. It seems clear that they do, and that the father can during his life make a title without any reference to the actually subsisting settlement: see *Hill v. Pritchard*, Kay, 394. If, again, the tenant for life and tenant in tail, instead of resettling the estate, convey it to a purchaser, do the powers of the tenant for life continue notwithstanding his assignment of his life interest?

Sub-s. 3.
Right of
assignee.

"Assignee for value," it will be observed, includes, by virtue of sub-s. 4, a mortgagee, or other incumbrancer, and will also, of course include the trustee in bankruptcy of the tenant for life. See *Hole v. Escott*, 4 My. & Cr. 187; 2 Keen, 444.

It is expressly provided that the power of leasing may be exercised without the consent of the assignee, where he is not in possession, and it should be noticed, that by granting a building lease with a peppercorn rent for the first five years (s. 8) the tenant for life may seriously

prejudice the rights of his assignees. The other powers conferred by the Act can scarcely ever be exercised without the consent of the incumbrancer, for it is clearly for him to judge whether his rights are prejudiced or not. § 50.

It is somewhat anomalous that a tenant for life has as against his mortgagee larger powers of leasing than an absolute owner possesses under similar circumstances. See the Conv. Act, 1881, s. 18.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void. § 51.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

The provisions of this section seem very completely to secure their object, but it may be doubted whether they do not extend to some other matters which were not kept in view by the framers of the clause.

In the first place, all limitations over on alienation, which in some cases are convenient if not necessary, are rendered absolutely void. See as to these, Lewin, 92, 7th ed. ; 2 Jarm. on Wills, 30, 4th ed.

It would also seem that a testator cannot effectually direct that Blackacre shall be sold before Whiteacre, if both are subject to the

§ 51. same trusts : see *Pierce v. Scott*, 1 Y. & C. C. C. 257 ; nor can he postpone the conversion of an estate for a limited period : *Swaine v. Denby*, 14 Ch. D. 326 ; nor prescribe certain "consents" to the exercise of the power : *Sykes v. Sheard*, 33 Beav. 114.

The provisions of this section are not confined to tenants for life, but by s. 58 (2) extend to all the "limited owners" therein mentioned. Accordingly, wherever there is a devise in fee with an executory gift over on alienation within a limited time, or to a certain class, the gift over will by this section be rendered void : see *Re Macleay*, L. R. 20 Eq. 186, in which case a devise "to my brother J., on condition that he never sells out of the family," was held to be valid.

Settlement. The comprehensive definition of "settlement" in s. 2, *ante*, is here ignored, but the words or "other instrument" would seem to include every instrument enumerated in that definition. An Act of Parliament, however, although an "instrument" within the meaning of this Act, cannot be said to be "executed or made," and would therefore be excluded from this section. See also s. 58 (1), i.

Sub-s. 2. Conditional limitation. Compare this sub-section with the analogous provision in the Conv. Act, 1881, s. 14 (5).

§ 52. **52.** Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Provision against forfeiture.

Forfeiture. The last section relates to the prohibitory clause in the instrument, the present, *ex abundanti cautela*, saves the tenant for life from the consequences of acting in contravention of the void clause.

It may also apply where the forfeiture is not of the interest under the settlement, but of some subsidiary benefit conferred, it may be, by a different instrument. For example, if a testator bequeaths an annuity of £1000 a year to A., but if he sells any part of the family estate, then the same to be forfeited, it is clear that A. can sell the estate and keep the annuity. But some difficulty is not unlikely to arise in particular cases, as to the provision in the last section rendering certain gifts void, if they tend to induce the tenant for life to abstain from exercising his powers. A testator, for example, bequeaths £1000 a year to A. so long as he resides in "Castle Dangerous," to enable him to keep up the same, but if he lets or sells the castle the annuity to cease. It would seem that this gift, being an inducement not to exercise the powers of the Act, is void, and that A. in such a case forfeits his annuity.

§ 53. **53.** A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled

Tenant for

under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties. **§ 53.**

life trustee for all parties interested.

The tenant for life, being a trustee, cannot himself purchase or take a lease of any part of the property. This was different when the power of sale was vested in trustees with the consent (*Howard v. Ducane*, T. & R. 81), or at the request (*Dicconson v. Talbot*, L. R. 6 Ch. 32) of the tenant for life, who was, in these cases, decided not to stand in a fiduciary position towards the remaindermen.

Tenant for life trustee.

It has even been held that a tenant for life, having a power of leasing, may grant a lease to a trustee for himself: *Wilson v. Sewell*, 4 Burr. 1979; and the doctrine has been extended to the case of a mortgagor with a power of leasing: *Bevan v. Habgood*, 1 J. & H. 222. "This is contrary to the general rule, and probably operates against the intention of the parties": Sugden on Powers, 717, 8th ed.; and it is not likely to be extended to the statutory powers of which the tenant for life is by this section expressly declared to be a trustee.

A further consequence of the tenant for life being declared a trustee seems to be that the Statute of Limitations is thereby excluded; and that an account, for example, of mining rents received by him under s. 11 may be carried back beyond six years. See *Hickman v. Upsal*, 4 Ch. D. 144.

It is to be remembered that, as between the tenant for life and the remainderman, time will not run while the estate of the latter continues reversionary; and that even knowledge of a breach of trust will not import acquiescence. See *Life Association of Scotland v. Siddal*, 3 D. F. & J. 58; *Thomson v. Eastwood*, 2 A. C. 215.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act. **§ 54.**

General protection of purchasers, &c.

The liberal terms of this section correspond with the general tendency of modern legislation as regards purchasers for value. See Conv. Act, 1881, ss. 21, 55, 70; and *Re Hall Dare's Contract*, 30 W. R. 556.

Protection of purchasers.

A breach of "good faith" would be committed either in the case

§ 54. of collusion between the purchaser and the tenant for life, or where there is such fraud, surprise, misrepresentation, or concealment on the part of the purchaser as would, between parties absolutely entitled, enable the vendor to rescind the contract. See Sugd. V. & P. 243, 14th ed.; Dart, V. & P. 747; *Redgrave v. Hurd*, 20 Ch. D. 1. As to rescission on the ground of the purchaser's misrepresentations, see *Haygarth v. Wearing*, L. R. 12 Eq. 320.

Payment of purchase-money. It is to be observed that, as regards the payment of the purchase-money, or other capital arising under this Act, the payer is protected by the receipt of the trustees (s. 40), or by payment into Court (s. 46); and it is absolutely essential that he should obtain a discharge in one of these ways; for if he pays to the tenant for life what should by s. 22 be paid to the trustees or into Court, this section will not protect him.

Note that it is the purchaser and not the tenant for life who is to be "taken to have complied with all the requisitions of this Act," although it is upon the latter alone that any requisitions are made.

The useless provision in Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 2 (repealed s. 64, *post*), saving a purchaser from inquiry as to re-investment, is not repeated here. See the remarks on that sect. in Dav. Conv. iii. 562, 3rd ed.

Notices to trustees. By s. 45 (3) *ante*, the purchaser is specially protected from inquiry as to the giving of the prescribed notices by the tenant for life. See as to sale, exchange, and partition, ss. 3, 4; as to leases, ss. 6-11; as to mortgages and charges, ss. 5, 18, 47.

§ 55. **55.—**(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exerciseable from time to time.

Exercise of powers; limitation of provisions, &c.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings,

powers, consents, payments, receipts, deeds, assurances, § 5.
contracts, expenses, acts, and transactions under this Act.

The statutory powers might, without the express authority of this ^{Exercise of} section, have been exercised from time to time, both as to different ^{powers.} parcels, and as to the same parcel where the nature of the power admitted of repeated execution. See *Sug. Powers*, 272, 8th ed.; *Chance on Powers* (440); *Sir Richard Lee's Case*, 1 And. 67; *Versturme v. Gardiner*, 17 Beav. 338.

"Enfranchisement" is in other parts of the Act treated as included ^{Enfranchisement.} in "sale," see ss. 3, 20, 21, 45, 54.

As a general rule, *all* the powers of the Act are exerciseable by the tenant for life; but where there is an infant owner they may be exercised on his behalf by the trustees of the settlement, or, if there are none, by a person appointed by the Court: s. 60, *post*. If this special authority to execute deeds were necessary in any case, it ought to have been extended to such persons as are appointed by the Court in the case of infants, and also to the committees of lunatics under s. 62.

56.—(1.) Nothing in this Act shall take away, abridge, § 56.
or prejudicially affect any power for the time being subsist- ^{Saving for}
ing under a settlement, or by statute or otherwise, exercise- ^{other}
able by a tenant for life, or by trustees with his consent, or ^{powers.}
on his request, or by his direction, or otherwise; and the
powers given by this Act are cumulative.

(2.) But, in the case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

§ 56.

Saving of
other
powers.

Although powers conferred upon trustees and others are saved by this section, they can never be exercised without the consent of the tenant for life, except indeed where he is an infant or a lunatic.

The same object, viz., the sale, exchange, lease, &c., of the settled land, may in some cases be effected either under the powers of the settlement, or under this Act; but it should be carefully borne in mind that the procedure of one or other must be consistently pursued.

Thus, if the power of sale by trustees is to be exercised with the consent of more persons than one (*e.g.* husband and wife), those consents must be obtained if the sale is made under the trustees' power. *Secus*, if the tenant for life sells under this Act.

"Where the consent of any person is required to the execution of a power, that, like every other condition, must be strictly complied with." Sug. on Powers, 252, 8th ed.

All conveyances, therefore, by trustees in exercise of powers, should be expressed to be made with the consent of A., tenant for life of the premises, and the consent should be given in the same transaction. Sug. on Powers, 255.

Power of
selling for
payment
of debts.

The tenant for life can in all cases veto the sale by the trustees, and he may even refuse his consent where there is an express or implied power (or a trust, s. 63) to sell for payment of debts. In such a case the Court, it is presumed, would not under this section, or s. 44, *ante*, compel the tenant for life to consent, and accordingly an action should be commenced for the purpose.

It seems doubtful whether executors can now make a title to leaseholds without the concurrence of the tenant for life, since it would be impossible in many cases to satisfy the purchaser that no assent had been given to the bequest, and that the leaseholds continued to be vested in the executors in that capacity, and not as trustees.

Sub-s. 3.
Decision
&c., of,
Court.

Semble, the trustees in whom copyholds are vested may enfranchise under the Copyhold Acts without the consent of the tenant for life.

The procedure under this sub-section will be analogous to that under s. 30 of Lord St. Leonards' Act (22 & 23 Vict. c. 35), whereby trustees were authorized to apply by petition or summons for the opinion or direction of the judge. See Lewin on Trustees, 534, 7th ed.

This sub-section, which, however, is extended to "any other person interested," is analogous to s. 44, *ante*, providing for the adjustment by the Court of "differences" between the trustees and the tenant for life. The application is to be made either by petition or summons at chambers, and the costs are in the discretion of the Court: s. 46 (3), (6). They would, however, in most, if not all, cases under this section be paid out of corpus.

§ 57.

57.—(1.) Nothing in this Act shall preclude a settlor

from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act. § 57.
Additional
or larger
powers by
settlement.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

The effect of this section will be to make special powers in the settlement, *e.g.*, powers of granting building leases for 999 years, operate as if they were conferred by this Act, "unless a contrary intention is expressed in the settlement." It is conceived that an inconsistency would of itself amount to an expression of a contrary intention. For example, if the consent of the trustees were required to the grant of a lease for 999 years, although such an attempted limitation of the powers of the tenant for life under this Act would be void (s. 51), yet the consent must be obtained if the special power is to be exercised.

The "additional or larger powers" may possibly be inconsistent with the policy of this Act, in which event they will no doubt be held to be inoperative. If, for example, power is given to the trustees to sell without the consent of the tenant for life, or to the tenant for life on exercising the power of sale to receive the purchase-money, it is presumed that such powers would be controlled by ss. 22 and 56 respectively. Compare the analogous provision in the Conv. Act, 1881, s. 18 (14).

XIII.—LIMITED OWNERS GENERALLY.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely): § 58.
Enumera-
tion of
other
limited
owners, to
have
powers of
tenant for
life.

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers

§ 58.

under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services :

- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event :
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown :
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent :
- (v.) A tenant for the life of another, not holding merely under a lease at a rent :
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose :
- (vii.) A tenant in tail after possibility of issue extinct :
- (viii.) A tenant by the curtesy :
- (ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall

extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised. § 58.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

The limited owners upon whom the powers of the tenants for life are hereby conferred must be entitled to an estate or interest "in possession;" and the question arises whether the enactment in s. 50, that the powers "remain exerciseable by the tenant for life after and notwithstanding any assignment" is applicable to these persons.

For example, if land is limited to A. for 99 years if he so long live, with remainder over, can A. with the consent of his mortgagees in possession make a title to the fee simple? It is submitted that he can, for that the words "in possession" have reference to the determination of preceding estates under the settlement, and not to the actual occupation of the land. See the definition of tenant for life which requires the person to be "beneficially entitled to possession," s. 2 (5), and sub-s. 2 of this section; and as to the meaning of the phrase "estate tail in possession," *Martelli v. Holloway*, L. R. 5 H. L. 532.

A tenant in tail in possession can under the Fines and Recoveries i. Tenant Act (3 & 4 Will. 4, c. 74), ss. 15, 40, 41, by a deed inrolled bar the in tail entail and acquire an estate in fee simple; but his power of disposition without inrolment was limited under that Act to the granting of leases for not more than twenty-one years. This formality of inrolment is unnecessary in exercising the powers of the present Act, but it must be remembered that if the tenant in tail assumes its powers he must comply with its provisions, and cannot require payment of the purchase-money into his own hands, or otherwise act as if he were an absolute owner.

"With the exception of alienation, including leases, unless according to the statute, a tenant in tail is at this day to be considered as much the absolute owner of the estate as a tenant in fee simple, and as such, may do what he pleases with the buildings and timber on the estate:" *Att.-Gen. v. Duke of Marlborough*, 3 Mad. 498, 532. If all the provisions of the present Act apply to a tenant in tail he will be bound to set aside one-fourth of the mining rent (s. 11), and to get the consent of the trustees to a lease of the mansion-house although he is entitled if he pleases to work out the mines for his own benefit, and to pull down the mansion-house: Co. Litt. 224, a. As to the effect of contracts by tenant in tail, see note to s. 31, ante, p. 99.

§ 58.

As to estates tail where the reversion is in the Crown, see 34 & 35 Hen. 8, c. 20, the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), s. 18; and the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 55.

And as to the inalienable estates purchased with money provided by Parliament in consideration of public services, see 3 & 4 Anne, c. 6; 5 Anne, c. 3 (Marlborough Estates); 46 Geo. 3, c. 146; 53 Geo. 3, c. 134; 55 Geo. 3, c. 96 (Nelson Estates); and 55 Geo. 3, c. 186, and other Acts mentioned in 2 & 3 Vict. c. 4 (Wellington Estates).

ii. Fee
simple
defeasible.

It must be remembered that by virtue of the Conv. Act, 1882 (45 & 46 Vict. c. 39), s. 10, executory limitations over on default or failure of issue become void and incapable of taking effect if and as soon as any issue attains the age of twenty-one years.

The present clause does not seem to apply where there is a gift to a class, which has vested in some of its members, but is liable to open and let in others to participate in the gift. See Jarm. on Wills, ii. 164, 4th ed., and *Re Evans*, 2 My. & K. 318.

iii. Base
fee.

The expression "base fee" is defined by the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), s. 1, to mean "that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred." Such an estate is created by a disposition of the lands entailed without the consent of the protector (Fines and Recoveries Act, s. 34). See as to the enlargement of base fees, *ibid.* ss. 19, 35; where there is no provision as to barring the rights of the Crown, *secus* in the corresponding Irish Statute, 4 & 5 Will. c. 92, s. 16.

iv. Years
determin-
able on
life.

A devise to A. for 99 years if he should so long live gives him only a chattel interest: *Harris v. Barnes*, 4 Burr. 2157. It is to be observed that however short the term may be, this section applies; but the cases are very rare in which such a term of years does not exceed the possible duration of life.

The ordinary form of mortgage by a tenant for life vests in his mortgagee an interest of this description (Dav. Conv. ii. pt. 2, 510, 4th ed.); but having regard to s. 50, *ante*, it cannot be supposed that the powers of the Act may be exercised by the mortgagee.

v. Tenant
pur autre
vie.

For a similar reason clause v. cannot be read as including the assignee of a tenant for life, but must be confined to a grant to A. to hold during the life of B. Note the expression in sub-s. (2), "the instrument under which his estate or interest arises," which seems pointed to the case of there being no "settlement" properly so called.

Where renewable leaseholds for lives are settled, the tenant for life has of course the powers of the Act without reference to this clause. See *Allen v. Allen*, 2 Dru. & W. 307; *Re Barber's S. E.*, 18 Ch. D. 624.

Examples illustrating clause vi. are furnished by a gift to a woman § 58.
 during widowhood : *Williams v. Williams*, 9 W. R. 888 ; to a vi. Life
 spinster until marriage : *Eaton v. Hewitt*, 2 Dr. & Sm. 184 ; to a estate sub-
 man until he becomes bankrupt, &c. : *Etches v. Etches*, 3 Drew. 441 ; ject to
 in fact, wherever the prior gift is determinable in any manner, the determi-
 donee is to rank as tenant for life until it is actually determined. nation.

This clause practically excludes the power of a testator to direct Accumu-
 payment of charges out of rents and profits ; for the person entitled for lation of
 life, subject to the accumulation may sell (and it is clearly his income.
 interest to do so) a sufficient portion of the estate to pay off the
 charges at once. *Secus*, if the accumulation is directed for payment
 of debts which are not incumbrances on the property. See *Tewart*
v. Lawson, L. R. 18 Eq. 490.

As to "tenant in tail after possibility of issue extinct," see Little- vii. Tenant
 ton's Tenures, ss. 32—34 ; Tudor's L. C. in Conv. 58, 3rd ed. This in tail after
 estate arises where lands are limited in tail to a man and the heirs of possibility
 his body by a particular wife, and the wife dies without issue. of issue
 Such a tenant is for most purposes to be regarded merely as a tenant extinct.
 for life, unimpeachable however in respect of waste, unless it be
 wilful and malicious : Tudor's L. C. in Conv. 115, 3rd ed.

The life estate which a husband takes in the freehold land of viii. Tenant
 inheritance belonging to his wife is here placed on the same footing by curtesy.
 as life estates under a settlement.

It must be observed, however, that in the few cases where this
 estate arises, there are, as a general rule, no settlement, no "instru-
 ment under which his estate arises" (see sub-s. 2), and no trustees.
 There is, therefore, considerable difficulty in giving practical effect
 to the provisions of the Act in respect of an estate by the curtesy.

Compare s. 46 of the Settled Estates Act, under which "any
 person entitled to the possession or to the receipt of the rents and
 profits of any *unsettled* estates as tenant by the curtesy, or in dower,
 or in right of a wife who is seised in fee" may grant leases for twenty-
 one years on the terms therein mentioned.

It is worthy of remark that this section makes no reference to
 tenancy in dower, or to customary estates of husband or wife in the
 lands of the other.

It was held in *Re Letchford*, 2 Ch. D. 719, that where an infant
 was absolutely entitled in fee simple, subject only to his father's
 tenancy by the curtesy, the estate might be considered a settled
 estate.

It is now settled that where a married woman has an equitable
 estate of inheritance to her separate use, and does not dispose of it by
 deed or will, her husband is entitled to curtesy : *Cooper v. Macdonald*,
 7 Ch. D. 288.

This last clause of the section is certainly a startling extension of ix. Person

§ 58. the powers of the Act, but one which is absolutely necessary in order to prevent an evasion of its policy. It enables a person who has no legal estate, no right to actual possession, and no voice in the management of the estate, to exercise all the powers of an absolute owner. The person receiving the net rents may, without the concurrence of the managing trustees, convey the estate to a purchaser, or grant leases, or deal with it in any of the modes authorized by the Act.

entitled to income.

It is to be observed that a trust to pay the income to A. during a term of years, whether determinable with his life, or otherwise, is not expressly included in this clause. The words "until sale of the land" do not, it is conceived, warrant the supposition that the interest of the *cestui que trust* can be made to cease on a sale, which would be in contravention of s. 51, but are inserted to provide for the case of a trust for sale, the income of the purchase-money after sale going in the same manner as the rents and profits.

Sub-s. 2.
Applica-
tion of
other pro-
visions of
the Act.

This sub-section extends the provisions of the Act referring to a tenant for life to the limited owners enumerated in sub-s. (1); those referring to a settlement to "the instrument under which the estate or interest arises," and those referring to settled land, to the land comprised in such last-mentioned instrument. It will be noticed that no mention is made of trustees of the settlement, the powers of the Court, the provisions as to investment, or to capital money arising under the Act. If these matters are not provided for, as they do not seem to be, the Act must remain a dead letter as regards these limited owners: see, however, ss. 61 (4), 63 (2), and notes thereon.

Sub-s. 3.
Reference
to death.

There is no reference in the Act to "death as regards a tenant for life." The clause to which it originally applied, relating to "Improvements with money of tenant for life," was struck out of the Bill at a late stage.

XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

§ 59.
Infant
absolutely
entitled to
be as
tenant for
life.

Infant
absolutely
entitled.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

The marginal note to this section, by the words "absolutely entitled," seems to imply that it refers solely to estates in fee simple, and does not include a leasehold interest at a rent. It is very doubtful, however, whether the marginal note can be read even for the purpose of throwing light upon an ambiguous phrase. See *Claydon v. Green*, L. R. 3 C. P. 511; *Re Venour's S. E.*, 2 Ch. D. 522, 525; *Aft.-Gen. v. Great Eastern Ry. Co.*, 11 Ch. D. 449, 460.

The general intention seems to be to bring the land of an infant, § 59. whatever may be his estate or interest therein, under the provisions of the Act. An estate for life, however, and the limited estates enumerated in s. 58 are not within this section, since they are expressly provided for in the next; and there would, therefore, appear to be some difficulty in reading "land" in this section as including a term of years. See the definition of land in s. 2 (10).

The 41st section of the Conv. Act, 1881, amends the Settled Estates Act by enacting that "Where a person in his own right seised of or entitled to land for an estate in fee simple, *or for any leasehold interest at a rent,* is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877."

It should be mentioned that "the Settled Estates Act," was in this clause substituted for "the Settled Land Act," when the latter was dropped during the Session of 1881.

The common origin of the two sections is clearly apparent, and the omission here of the words italicized in the former section is, to say the least of it, significant.

It is to be observed that the infant must be "seised of or entitled in possession to land," a phrase borrowed from the recital of the vendor's seisin, which was formerly introduced into many conveyances. See Byth. Conv. by Jarman, ii., 166. As to the highly technical meaning of the word seisin, see *Leach v. Jay*, 9 Ch. D. 42; Williams on Seisin, p. 7.

The expression "entitled in possession" does not mean that the infant must be in the actual occupation of the land, which he seldom can be, but that his interest is not to be reversionary. See the Conv. Act, 1881, s. 42, whereby certain trustees therein mentioned are empowered for purposes of management to enter into and continue in the possession of an infant's land. It would seem that an infant might be entitled "in possession" although prevented by that section from being "beneficially entitled to the possession" of the land.

Where an infant is absolutely entitled, since there is no "settlement," the provisions of s. 24, *ante*, do not apply; and capital money cannot therefore be re-invested in land.

60. Where a tenant for life, or a person having the § 60. powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other Tenant for life, infant.

§ 60. guardian or next friend of the infant, either generally or in a particular instance, orders.

Tenant for
life an
infant.

The trustees of the settlement may under this section exercise on behalf of an infant the various powers of the Act ; and, it is presumed, that in such an event they need not give notices to each other or to their solicitor under s. 45.

The union of the two characters of tenant for life and trustees in the same persons gives rise to some curious results. They possess an absolute discretion as to sale and investment, ss. 3, 22 ; they may submit for their own approval a scheme for the improvement of the estate, and on the certificate of an engineer or surveyor nominated by themselves (who, however, must be approved by the Land Commissioners or by the Court) may apply any capital money in their hands in payment for the works (s. 26).

It is also important to observe that they possess an uncontrolled discretion as to selling or letting the principal mansion house and park (s. 15) ; and as to the cutting and sale of timber (s. 35).

Seem, the infant need not be a consenting party to the exercise of the powers by the trustees ; for s. 56 (2) applies only to powers conferred by the settlement, and in this case they are conferred not by the settlement but by the Act. As to the capacity of an infant to execute a power, see *Re D'Angibau*, 15 Ch. D. 228 ; Simpson on Infants, 40. As to the appointment of trustees of the settlement by the Court, see s. 38, *ante*. The present section empowers the Court to appoint persons who, although not "trustees of the settlement," may exercise such of their powers as the Court sees fit to confer ; but if, under s. 38, persons are properly appointed trustees of the settlement, they will, without any further authority from the Court, be able to exercise *all* the powers of the Act.

Infants'
Settle-
ments Act.

Where the settlement whose powers are being exercised has been made upon the marriage of an infant under the Infants' Settlement Act (18 & 19 Vict. c. 43, extended to Ireland by 23 & 24 Vict. c. 83), it should be remembered that, if the infant dies under twenty-one, "any appointment under a power of appointment, or any disentailing assurance" executed by the infant under the provisions of the Act becomes absolutely void. The settlement, therefore, if dependent on an appointment, or disentailing assurance would also in the event of the infant's death become void ; and a purchaser under the powers either of the settlement or of this Act, would have no title to the property.

Guardians
of infants.

The guardians of an infant may it seems grant leases of his estate under ss. 46, 49 of the Settled Estates Act, and see the note to s. 41 of the Conv. Act, 1881, in the edition of that Act by Messrs. Wolstenholme & Turner, p. 32, 2nd ed. The words "or an infant would, if

he were of full age, be a tenant for life," appear to be inserted to meet the case where trustees have a discretion as to the application of income for the maintenance of an infant ; see Conv. Act, 1881, s. 43 ; *Re Cotton*, 1 Ch. D. 232. If there were a gift to the testator's wife during the minority of his son, A., but when the said A. should attain twenty-one to him for life with remainders over, it seems that, under this section, the trustees might exercise the powers during the minority of A. § 60.

As to whether this and the preceding section apply in the case of an infant married woman, see note to s. 61. It may be mentioned that in the Bill as introduced in 1882 a proviso was added to this section that nothing therein contained should apply to a married woman.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman. § 61.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act. Married
woman,
how to be
affected.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

The manner in which this section is framed cannot fail to give rise to questions of considerable difficulty. There is, in the first place, a Married
women.

§ 61. wholesale exclusion of the sixty previous sections (sub-s. 1), and then what appears to be only a partial incorporation of certain provisions (sub-s. 4). It is to be observed that only the "foregoing provisions" are excluded, s. 63, *post* (introduced at a late stage), being apparently overlooked.

Infants. There is some difficulty in determining whether the powers of the Act can be exercised at all, in respect of land belonging to an infant married woman; and, if they can, whether the persons to exercise them are the trustees under s. 60, or she herself with or without her husband as the case may be under the present section.

It should be mentioned that the corresponding clause in the Bill, before it was amended by the Select Committee, provided expressly that a married woman might exercise the powers although an infant. The probable intention of the Committee in striking out that provision, was to exclude the particular case from the section. The argument, however, is not conclusive. On the construction of the section itself a single example will suffice to show that she cannot if an infant exercise the powers. Suppose an estate limited to her for her separate use. Now, "if she had not been a married woman," she would *not* in such a case have had the powers of a tenant for life, inasmuch as they are conferred upon the trustees during her infancy by s. 60; and she, therefore, does not come within the terms of sub-s. 2.

Neither is she "entitled otherwise than as aforesaid," within the meaning of sub-s. 3; for those words mean "not for her separate use:" see note on sub-s. 3, *post*.

Difficulty is also experienced in holding that the powers may be exercised by the trustees; for, as we have seen, "the foregoing provisions" do not apply, and sub-s. 4 seems scarcely wide enough to confer powers on "the trustees of the settlement."

Sub-s. 2.
Separate
use.

The words "if she had not been a married woman" would seem to be applicable rather to the case where there is no separate use, than to that in which there is. For, when a married woman is entitled for her separate use, although the legal estate may be in the husband or in trustees, she would at all events have the powers of a tenant for life as "a person entitled to the income of land under a trust, &c.;" s. 58, ix.; and see now the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1.

The phrases "separate property" and "as a *feme sole*" seem to be introduced to provide for the various expressions which occur in Acts of Parliament. See 33 & 34 Vict. c. 93; 37 & 38 Vict. c. 50, both now repealed and consolidated by 45 & 46 Vict. c. 75.

Sub-s. 3.
Entitled

The previous sub-section having provided for the cases in which a married woman is entitled for her separate use, or for her separate property, or as a *feme sole*, the present clause deals with the case

"where she is entitled otherwise than as aforesaid," i.e., where she is not entitled for her separate use, separate property, or as a *feme sole*. It does not include her separate property held in fee simple, or any estate which from her infancy or lunacy is not comprised in sub-s. 2. § 61.

It is perhaps scarcely accurate to speak of a married woman being "entitled" to land when she does not hold for her separate use, for "when a wife is seised of land in fee simple, in tail, or for life, and not settled to her separate use, it is said that her husband and she are seised in her right, and her husband takes a freehold interest in such land during the joint lives of his wife and himself:" Dav. Conv. ii. pt. 1, 241, 4th ed. He may, without his wife's concurrence, dispose of her land, but not so as to extend beyond the limits of his own interest: Williams, R. P., 225, 11th ed. It is clear that nothing in this Act takes away from the husband any power of disposition which he formerly possessed; and he may, accordingly, dispose of his wife's leaseholds either absolutely or by way of mortgage: see *Hill v. Edmunds*, 5 De G. & Sm. 603.

By the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46, powers of granting leases for twenty-one years are conferred upon any person entitled to the possession, or to the receipt of the rents and profits of settled estates, for an estate for life, or for any greater estate, either in his own right, or in right of his wife; and also in the case of unsettled estates where such person is entitled as tenant by the curtesy, or in dower, or in right of a wife who is seised in fee.

Semble, when a married woman is seised in fee simple of land not settled to her separate use the powers of this Act are not applicable.

The limited terms in which the provisions of the Act are here incorporated, excludes the supposition that, subject to the modifications introduced by this section, the entire body of the Act is to be applicable in the case of married women. It will be observed that provisions relating to only three subjects, viz, a tenant for life, a settlement, and settled land, are here referred to. What the effect of this section may be upon the trustees of the settlement, the Court, the Land Commissioners, and purchasers, is extremely doubtful; but it is submitted that, since the powers would be unworkable without the ancillary provisions of the Act (*e.g.*, Trustees of the settlement, powers to give receipts, &c.), some interpretation must be put either upon sub-s. (1) or sub-s. (4), so as to authorize the adoption of those provisions. Sub-s. 4.
Certain provisions applied.

A married woman may, it is presumed, exercise the powers of this Act without a deed acknowledged; as to which see the Conv. Act, 1882, s. 7. As to the general power of alienation possessed by a married woman over property not settled to her separate use, see the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), ss. 77-91; and over Sub-s. 5.
Execution of deeds, &c.

§ 61. her separate estate, *Taylor v. Meads*, 4 D. J. & S. 597; *Pride v. Bubb*, L. R. 7 Ch. 64; *Cooper v. Macdonald*, 7 Ch. D. 288.

Sub-s. 6. **Restraint on anticipation.** It was enacted by the 50th section of the Settled Estates Act that no clause or provision in any settlement restraining anticipation should prevent the Court from exercising any of the powers of the Act.

The Court has also, under the Conv. Act, 1881, s. 39, a general discretion as to dispensing with the restraint where it appears to be for her benefit.

In the present clause the matter is carried a step farther; and the *parties* may act without regard to the fetters of restraint; but it is presumed that it would attach itself to any property acquired in substitution for that disposed of under the Act.

Form of conveyance by a married woman, see p. 163, *post*.

§ 62. **Tenant for life, lunatic.** **62.** Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

Lunatic. This section only applies where the lunatic has been so found by inquisition; if he has not been so found, there is no provision in the Act authorizing the guardians or the trustees to exercise the powers on his behalf. See *Re Clough's Estate*, L. R. 15 Eq. 284; *Re Crabtree's S. E.*, L. R. 10 Ch. 201.

When the lunatic is an infant tenant for life, it seems that the section supersedes s. 60, and that the committee, and not the trustees, is the person to exercise the powers: but if the infant is a limited owner (*e.g.*, tenant in tail) other than a tenant for life, this section however unreasonable the construction may be, does not apply, the infant in such a case not being "a person having the powers of a tenant for life." In like manner the effect of this section in the case of a married woman who is a lunatic is peculiar. If she is entitled for her separate use this section seems to apply; but if not so entitled her husband and the committee cannot exercise the powers; and the lunacy of the husband seems also to put an end to the powers.

XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

§ 63.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised,

§ 63. subject and except as in this section provided (that is to say):

- (i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners, or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).
- (ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.
- (iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the

settled land, and the income of such capital § 63.
money and securities shall be paid or applied
accordingly.

- (iv.) Land of whatever tenure acquired under this Act, by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

The marginal note is misleading. In settlements made in this Settlement there is, as a general rule, no trust for re-investment in land. ^{ment by}
See sub-s. (2), ii. This elaborate section, which was introduced by ^{way of}
the Select Committee, is chiefly intended to provide for the case of ^{trust for} sale.
land being vested in trustees upon trust to sell, the trusts being declared not of the land, but of the purchase-money; and it is this circumstance which renders necessary all the repetition found in this section. The land being conveyed unto and to the use of trustees and their heirs upon trust to sell, there is no limitation in trust for any persons by way of succession, and, therefore, but for this section, there would have been no "settlement" (s. 2). In like manner there would have been no "settled land" or "tenant for life" within the meaning of the respective definitions in s. 2.

It is to be observed that a trust for accumulation (as in s. 58 (vi.)) ^{Trust for}
does not prevent the exercise of the powers. Thus, if Blackacre is ^{accumula-}
devised to trustees, upon trust to receive the rents and profits and ^{tion.}
accumulate them until a sum of £10,000 has been set aside, and then to sell and hold the proceeds of sale upon trust for A. during his life, &c., A. can immediately sell the estate, set aside the sum of £10,000, and enjoy the income of the rest; whereas before the Act he would have taken nothing unless he survived the period of accumulation.

This section does not apply where there is only an implied power under a charge of debts, and not an express "trust or direction for sale;" but the estate, and not the proceeds of sale being in that case the subject of the devise, it will be "settled land" under the foregoing provisions of the Act.

§ 63.

Sub-s. 2.
Applica-
tion of
other pro-
visions.

This form of incorporating the provisions of the Act is similar to that employed in ss. 58 (2), 61 (4) ; and as an exception often enlarges the scope of an ambiguous gift, by showing what would have been included but for the exception ; so, here, valuable aid is furnished in the interpretation of this clause, by the matters which are excepted from its operation ; and these sub-clauses show at once that the provisions relating to "remaindermen," "capital money arising under the Act," and "the trustees of the settlement," although not referred to, must be intended to be included in the preceding provision.

- Clause i. For references in the Act to "predecessors in title," see ss. 12, 20 ; to "successors in title," see ss. 20, 28, 29, 31 ; and to "remaindermen or reversioners, or other persons interested in the settled land," see ss. 28, 38, 53, 54.
- Clause ii. As to the re-investment of capital money in the purchase of land, see ss. 21, 24 ; and as to the modes of application of capital money authorized by the Act, see s. 21.
- Clause iii. The land being by "the trust or direction for sale" equitably converted into personalty, the provision in s. 22 (5) has to be excluded, in order that the purchase-money may not be reconverted contrary to the intentions of the parties.
- Clause iv. The form of conveyance of freeholds directed in s. 24 would be of course inapplicable to a case where the interests of the beneficiaries are declared by trusts of the purchase-money, and not by limitations of the freehold.

XVI.—REPEALS.

§ 64.

Repeal of
enactments
in sche-
dule.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act ; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act ; nor shall the same affect any action, proceeding, or thing then pending or uncompleted ; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

The saving clause in this section is identical with that in the **§ 64.**
Conv. Act, 1882, s. 13, with the addition of the words "or of any Repeal.
order made."

On comparison with s. 71 of the Conv. Act, 1881, it will be found that it has been here amplified by the addition of the words "Shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act."

The Acts hereby repealed are Lord Cranworth's Act (23 & 24 Vict. c. 145), so far as it has not been already repealed; certain provisions of the Improvement of Land Act, 1864, relating to preliminary advertisements and notices, and to the dissent by persons interested in the property; and s. 17 of the Settled Estates Act, which relates to proceedings for the protection of the settled estate, and which is replaced by the more extensive provisions of s. 36, *ante*, p. 104.

It should be noticed that ss. 8 and 9 of Lord Cranworth's Act, relating to the power of trustees to renew leases, and to raise money by mortgage for the purpose of paying for equality of exchange or renewals, are not replaced by any other similar enactments.

With reference to the obligation to renew and the incidence of the burthen as between tenant for life and remainderman, see Lewin on Trusts, 331, 7th ed.; Dav. Conv. iii. 605-624, 3rd ed.; and for form of trust for renewal, *Ibid*, 1131.

XVII.—IRELAND.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section **§ 65.**
provided. Modifica-
tions re-
specting
Ireland.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made

40 & 41
Vict. c. 57.
L 2

§ 65. accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exercisable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

40 & 41
Vict. c. 56.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exercisable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

Ireland.

The exceptional character of recent land legislation in Ireland renders it extremely difficult to apply successfully a common code to the two countries. The effect, indeed, of that legislation upon the ordinary powers of leasing in settlements is a subject deserving more careful consideration than can be here accorded to it; but it must be observed that somewhat similar considerations arise in the application of the leasing powers under this Act. It cannot be supposed that the present Act enables a tenant for life to grant to a lessee a lease which would not be binding on the latter if made by an absolute owner. In other words, this is merely an enabling Act for landlords, as the Land Law Ireland Act is a protective one for tenants; and in each the complexities introduced by the disabilities of the other class are to a great extent overlooked.

Under the Land Law Ireland Act, 1881 (44 & 45 Vict. c. 49), a lease in order to be binding on the tenant, except where he has power to contract himself out of the Act (s. 22), must be either a

judicial lease (s. 10) or a fixed tenancy (s. 11); and save as aforesaid any lease inconsistent with the provisions as to those statutory tenancies is by s. 22 declared to be void. It seems clear, therefore, that a lease made under the Settled Land Act must, in order to be binding on the tenant, conform to the requirements of a judicial lease; for a fixed tenancy, *i.e.*, a perpetuity, is not within the powers thereby conferred. § 65.

The characteristics of a judicial lease which it is necessary here to notice are, that it must be for thirty-one years or upwards, that it must be sanctioned by the Court (*i.e.*, the Civil Bill Court or the Land Commission), and that upon its expiration the lessee is to be deemed the tenant of a "present ordinary tenancy" at the rent and subject to the conditions of the lease.

Having regard to the last mentioned provision it seems open to question whether the grant of a judicial lease is within the powers conferred on a tenant for life by this Act; but it must be admitted that if it were so held the operation of the Act as regards leases would be confined to the exceptional cases where a tenant has power to contract himself out of the Act (s. 22), or where the tenancies are excluded from the operation of the Act (s. 58).

See the definition of "Civil Bill Court" in the County Officers and Courts Acts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), s. 7; and note the more elaborate provisions in s. 46 (10), *ante*, as to the jurisdiction of the English County Courts. Sub-s. 6.
Civil bill
courts.

As to the meaning of "annual value," see 40 & 41 Vict. c. 56, s. 31; and as to the Court in which proceedings are to be taken, *Ibid*, s. 40.

In accordance with the provisions of the Settled Estates Act, s. 4, the term for leases in Ireland is here extended to thirty-five years; the result of which is that every lease granted under the Act must be for a term of years between thirty-one and thirty-five. Sub-s. 10.
Length of
term.

Sect. 64.

THE SCHEDULE.

REPEALS.

23 & 24 Vict. c. 145 . in part.	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills } in part ; namely,—
	PARTS I. AND IV. (being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).
27 & 28 Vict. c. 114 . in part.	The Improvement of Land Act, 1864, in part ; namely,— Sections seventeen and eighteen : Section twenty-one, from “ either by a party ” to “ benefice ” or ” (inclusive) ; and from “ or if the land owner ” to “ minor or minors ” (inclusive) ; and “ or circumstance ” (twice) :
	Except as regards Scotland.
40 & 41 Vict. c. 18 . in part.	The Settled Estates Act, 1877 . in part ; namely,— Section seventeen.

PRECEDENTS.

I.

SETTLEMENT *upon* MARRIAGE of FREEHOLDS in FEE SIMPLE, and COPYHOLDS of INHERITANCE, *the property of the intended husband, as to the FREEHOLDS, to the use of the HUSBAND for LIFE, remainder subject to the wife's JOINTURE to the first and other SONS of the marriage, successively in TAIL MALE, remainder to the husband IN FEE ; TRUSTS of term for raising PORTIONS ; COVENANT to SURRENDER COPYHOLDS to USES CORRESPONDING with those of the FREEHOLDS ; SHORT trustee clauses with reference to the CONVEYANCING ACT, 1881, and the SETTLED LAND ACT, 1882 (a).*

MARRIAGE
SETTLEMENT OF
FREEHOLDS
AND COPY-
HOLDS.

THIS INDENTURE, made the — day of —, BETWEEN Parties. A. of, &c. (*settlor and intended husband*), of the first part, W.

(a) This concise form of a strict settlement is furnished principally as an example of the clauses which may be safely omitted, in reliance upon the provisions of the modern statutes. A few observations may not be out of place as to the modifications here introduced.

Note on
the form
of strict
settlement.

It will be noticed in the first place that there is only one set of trustees instead of several as was formerly the practice. The same persons in whom the portions term is vested are appointed trustees for the purpose of managing the estate during minorities under s. 42 of the Conveyancing Act, 1881, and are also constituted "the trustees of the settlement" within the meaning of the Settled Land Act. Trustees to preserve contingent remainders have been rendered obsolete by 8 & 9 Vict. c. 106 ; and trustees of powers are, having regard to the statutory provisions in the Settled Land Act, now unnecessary.

One set of
trustees.

The limitation of a term to trustees to secure the wife's jointure is omitted in reliance upon the powers conferred by s. 44 of the Jointure.

MARRIAGE SETTLE- MENT OF FREEHOLDS AND COPY- HOLDS.	of, &c. (<i>intended wife</i>), of the second part, and X. of, &c., and Y. of, &c. (<i>trustees of the settlement</i>), of the third part ;
Portions term.	Conveyancing Act, 1881 ; since she will under that section have powers of distress and entry and a power of demising the land to a trustee for a term of years upon trust to raise the annual sum in a manner amply sufficient to meet the necessities of the case.
Trustees for man- agement.	In the trusts of the portions term provisions for maintenance must still be retained, as s. 43 of the Conveyancing Act does not apply unless there is in the hands of trustees property to which the infants must become entitled on attaining twenty-one years of age.
Clauses supplied by Settled Land Act.	The clause providing for the receipt and application of the rents and the management of the estate during minorities is supplied by s. 42 of the Conveyancing Act, 1881.
	The following usual clauses are omitted in reliance upon the several sections of the Settled Land Act, to which reference is made :—
	Powers of granting agricultural, building, and mining leases, ss. 6—11.
	Power to grant to copyholders licences for leasing, s. 14.
	Powers of sale and exchange, partition, and enfranchisement, ss. 3, 4.
	Power to convey under the statutory authority instead of by way of revocation of the uses, s. 20.
	Power to sell, exchange, make partition or grant mining leases of the surface and minerals separately, s. 17.
	Trust for investment of purchase-moneys, and settlement of purchased lands, ss. 21, 24.
Covenants for title.	The covenants for title are intended to be implied under s. 7 of the Conveyancing Act, 1881, by the use of the words, “as beneficial owner,” in the witnessing parts of the conveyance. Full vendor’s covenants are generally inserted in a marriage settlement, and the talismanic words, “as beneficial owner,” will in that particular give effect to the prevailing practice. If, however, it is desired to limit the settlor’s covenants to one for further assurance, the object may be achieved by the adoption of the words “as settlor” instead of “as beneficial owner.” The opinion of the author is that, having regard to s. 7, sub-s. (5) of the Conveyancing Act, covenants for title cannot be implied as to copyholds in a covenant to surrender ; which is not “a deed conferring the right to admittance” within the meaning of that sub-section. In deference, however, to the opposite opinions of various text-writers, who are content to rely upon the Act, these covenants are in the above precedent omitted with reference to both copyholds and freeholds.
Clauses supplied by the	In addition to the provisions already referred to, the Conveyancing Act, 1881, contains a number of enactments enabling the instrument to be curtailed in the following particulars :—General words

WHEREAS a marriage has been agreed upon and is intended to be shortly solemnized between the said A. and W.: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, the said A., as beneficial owner, doth hereby convey unto the said X. and Y., and their heirs, ALL, &c. (*freehold parcels*): To HAVE AND TO HOLD the hereditaments and premises hereby conveyed unto the said X. and Y. and their heirs; To THE USE of the said A. and his heirs until the said intended marriage, and from and after the solemnization thereof; To THE USE of the said A. during his life without impeachment of waste; AND FROM AND AFTER the decease of the said A. TO THE USE that the said W. (if she shall survive the said A.), shall from and after his decease receive during her life the annual sum of £—— for her jointure and in lieu of dower and freebench, to be charged upon the said hereditaments and premises, and payable by equal half-yearly payments on the —— day of ——, and the —— day of —— in each year, the first payment or a proportionate part thereof to be made on the first of such days as shall come next after the decease of the said A.: AND subject to the said rent charge and the statutory remedies for recovery thereof; To THE USE of the said X. and Y. for the term of five hundred years, to commence from the decease of the said A. without impeachment of waste; UPON the trusts herein-after declared concerning the same: AND, subject as afore-said, TO THE USE of the first and every other son of the said A. by the said W. successively in remainder one after the other, according to seniority and the heirs male of the respective bodies of such first and other sons; AND in default of such issue, To THE USE of the said A. and his heirs. AND IT IS HEREBY AGREED AND DECLARED that the said hereditaments and premises are hereby limited to the use of the said X. and Y., for the term of five hundred years as aforesaid, upon trust that if there shall be any child or children of the said A. and W. (other than a first or only son, or any other son or sons, who before attaining his or their age or respective ages of

MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
AND COPY-
HOLDS.

Conveyance
of free-
holds.

Habendum.

To the
husband
until the
marriage.

To the
husband
for life.

To the use
that the
wife shall
receive a
jointure.

To the
trustees
for 500
years to
secure
portions.

To the first
and other
sons in tail
male.

To the
husband
in fee.

Trusts of
portions
term.

may be omitted (s. 6), and also "all the estate" clause (s. 63); covenants are simplified by the omission of words both of introduction and limitation (ss. 58, 59); and finally the power of appointing new trustees is reduced to a few words adopting the statutory provisions on the subject (s. 31).

Conveyanc-
ing Act,
1881.

**MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
AND COPY-
HOLDS.**

Hotchpot.

**Mainten-
ance.**

twenty-one years shall become entitled in possession or remainder to the first estate tail under the aforesaid limitations), who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the said X. and Y., or other the trustees for the time being of the said term of five hundred years, shall after the death of the said A., by mortgage of the said hereditaments and premises or any part thereof, for all or any part of the said term, or by the sale of timber, or minerals, or by and out of the rents and profits of the said hereditaments and premises, or any part thereof, or by all or any of the means aforesaid, or by any other reasonable means, raise for the portion or portions of such child or children as aforesaid (other than a son entitled as aforesaid), the sum of £——, and shall hold the same in trust for all, or such one or more exclusively of the others or other of such children (other than a son entitled as aforesaid), at such age or time, or respective ages or times (not previous as to a son to his attaining twenty-one, or as to a daughter to her attaining that age or marrying), if more than one in such shares, and with such provisions, upon such conditions, and subject to such restrictions as the said A. shall by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil appoint: AND in default of such appointment, and so far as any such appointment shall not extend, for such children (other than a son entitled as aforesaid), if more than one in equal shares, and if only one such child then the whole to be in trust for such child; the portion of each child entitled under the aforesaid trust to be paid, as to sons on attaining the age of twenty-one years, and as to daughters on attaining that age or marrying, whichever shall first happen, if the same shall happen after the death of the said A., but if the same shall happen during his life, then immediately after his death; PROVIDED ALWAYS that no child taking any part in the said sum of £——, under the aforesaid power of appointment shall, in default of appointment to the contrary, by the said A., take any share of the unappointed part of the said sum, without bringing his or her appointed share into hotchpot: AND IT IS HEREBY DECLARED that the said X. and Y., or other the trustees for the time being of the said term, shall after the death of the said A., out of the rents and profits of the said hereditaments and premises, raise for the maintenance and education of any child for the time

being entitled in expectancy to a portion under the aforesaid trusts, such yearly sum (not exceeding £4 per cent. of such child's expectant portion), as the said A. shall by any deed or deeds with or without power of revocation and new appointment, or by will or codicil appoint; and in default of such appointment, and so far as any such appointment shall not extend, such yearly sum (not exceeding £4 per cent. of such child's expectant portion), as the trustees for the time being shall think fit; the said yearly sum to be paid and applied in such manner as the said A. shall direct, and in default of any direction in that behalf at the discretion of the trustees for the time being, who may either themselves pay and apply the same for the purposes aforesaid, or pay the same to the guardians of such child without being answerable for its application: PROVIDED ALWAYS and it is hereby declared that it shall be lawful for the said X. and Y., or other the trustees for the time being of the said term, after the death of the said A., or in his lifetime with his consent in writing, by any of the ways and means aforesaid, to raise any sum or sums of money, not exceeding altogether one-half of the then expectant or presumptive share of any son of the said A. and W. in the said sum of £——, and to pay or apply the same for the advancement or benefit of such son, in such manner as the said A. during his life, and after his death as the trustees or trustee for the time being shall think fit; AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage, the said A., as beneficial owner, doth hereby covenant with the said X. and Y., that if the said intended marriage shall take place, he the said A. will forthwith surrender into the hands of the lord of the manor of which the same is held, according to the custom of the manor, ALL, &c. (*copyhold parcels*), held by copy of court roll of the manor of ——— To THE USE of the said X. and Y., and their heirs according to the custom of the said manor, and at or under the accustomed fines, heriots, suits, and services, UPON SUCH TRUSTS and with and subject to such powers, provisoes, agreements, and declarations as shall correspond with the uses, trusts, powers, provisoes, agreements, and declarations, hereinbefore limited and declared of and concerning the said freehold hereditaments and premises as nearly as the different tenure of the premises and the rules of law will permit, but not so as to increase or multiply charges or powers of charging; AND IT IS HEREBY

MARRIAGE
SETTLEMENT OF
FREEHOLDS
AND COPY-
HOLDS.

Advancement of
younger
sons.

Covenant to
surrender
copyholds.

Copyhold
parcels.

To the use
of the
trustees.

Upon
trusts cor-
responding
with the
uses of the
freeholds.

New
trustees.

MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
AND COPY-
HOLDS.

Trustees to
be deemed
"manage-
ment
trustees"
and
"trustees
of the set-
tlement."

DECLARED that the power of appointing a new trustee of these presents under or by virtue of the Conveyancing and Law of Property Act, 1881, shall be exercisable by the said A. during his life, and that the trustees or trustee for the time being of these presents shall be deemed to be the trustees appointed for the purpose of section 42 of the said Act, and also the "trustees of the settlement" within the meaning of the Settled Land Act, 1882.

IN WITNESS, &c.

II.

MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
BY WAY OF
TRUST FOR
SALE.

SETTLEMENT *upon* MARRIAGE of FREEHOLDS *upon* TRUST for SALE, with a DECLARATION of TRUST of the PURCHASE MONEY in favour of the husband, wife and children. ULTIMATE TRUST for the HUSBAND : TRUSTS of rents and profits until SALE (a).

Parties.

THIS INDENTURE, made the — day of — BETWEEN A. of, &c. (*settlor and intended husband*), of the first part, W.

(a) Except in the case of family estates, settled in strict settlement, a marriage settlement of real estate is usually made by means of a trust for sale, and declaration of trust as to the proceeds of sale, with a proviso that until sale the rents and profits of the land shall be applied in the same manner as the income of the trust funds.

It has been hitherto the practice to make use of two deeds to effect this purpose ; the first simply vesting the estate in trustees upon trust for sale with a direction to hold the proceeds of sale upon the trusts declared by an indenture of even date ; and the second declaring those trusts as if the fund were personalty. The object of thus employing two deeds was, not to keep notice of the trusts off the title to the land, but to enable the trustees to sell without making the whole settlement a document of title.

Where many other items of property are included in the settlement, and when it is, in consequence, a very lengthy instrument, this course may still be followed with advantage ; but in a simple case nothing now seems to be gained by separating the trust for sale from the declaration of trust ; for the latter is part of the title of the pur-

of, &c. (*intended wife*), of the second part, and X. of, &c., and Y. of, &c. (*trustees for sale*), of the third part, WITNESSETH that in consideration of a marriage intended to be shortly solemnized between the said A. and W. he the said A. as settlor (or "as beneficial owner," see note *ante*, p. 152) hereby conveys unto the said X. and Y. and their heirs, ALL, &c. (*parcels*), TO HAVE AND HOLD the said premises unto the said X. and Y. and their heirs; TO THE USE of the said A. and his heirs until the said intended marriage; and from and after the solemnization thereof, TO THE USE of the said X. and Y. and their heirs; UPON TRUST that the said X. and Y. and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called "the trustees," shall on the request in writing of the said A. and W. during their joint lives, and of the survivor during his or her life, and after the death of such survivor at their or his discretion, sell the said premises, and stand possessed of the proceeds of sale, after paying thereout the expenses thereof; UPON TRUST with the consent of the said A. and W. during their joint lives, and of the survivor during his or her life, and after the death of such survivor at their or his discretion to invest the same in the names or name of them or him in any of the public stocks, funds or government securities of the United Kingdom, or in the shares, stocks, debentures, debenture stock, bonds, mortgages, or securities of any company or corporation in the United Kingdom, or upon mortgage of land in England or Wales, being freehold or copyhold of inheritance, or leasehold held for a term of years whereof not less than sixty years shall be unexpired at the date of investment; and with such consent, or at such discretion as aforesaid, from time to time vary or transpose any of such stocks, funds, shares or securities into or for others authorized by the foregoing trust: AND shall pay the income of the trust funds to the said A. during his life, and after his death to the said W. during her life: AND FROM AND

MARRIAGE
SETTLEMENT OF
FREEHOLDS
BY WAY OF
TRUST FOR
SALE.

Convey-
ance by
husband.

Parcels.

Haben-
dum to
trustees.

To the use
of the hus-
band in fee
simple
until the
marriage.

After the
marriage to
the use of
trustees
upon trust
for sale.

Invest-
ment.

Income to
be in trust
for hus-
band for
life.

chaser. By s. 56 of the Settled Land Act, no sale can be made without the consent of the tenant for life, or other limited owner, and to discover whether this consent is properly given it will be in all cases necessary to consult the instrument declaring the trusts.

The course therefore has been adopted in the above precedent of uniting in one deed the provisions of the trust for sale and declaration of trust as to the proceeds.

**MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
BY WAY OF
TRUST FOR
SALE.**

death for
wife for
life.

After the
death of
survivor
for issue of
the mar-
riage as
husband
and wife or
survivor
shall
appoint.

And in
default of
appoint-
ment for
sons at
twenty-
one, and
daughters
at twenty-
one or
marriage
in equal
shares.

Hotchpot.

Advance-
ment.

Ultimate
trust in
default of
children
for the
husband.

Trusts of
rents of
real estate
until sale.

AFTER the death of the survivor of the said A. and W. shall stand possessed of the trust funds upon trust for the issue (whether children or more remote) of the said A. and W., such remoter issue to be born within twenty-one years of the death of the survivor of the said A. and W., at such age or time, or respective ages or times, in such shares if more than one, upon such conditions and in such manner as the said A. and W. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, as the survivor of them the said A. and W. shall by any deed or deeds, or by his or her will or any codicil thereto appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, UPON TRUST for all the children of the said A. and W. who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry in equal shares, and if there shall be but one such child, then the whole to be in trust for such child: PROVIDED ALWAYS that no child who or any of whose issue shall take any part of the trust funds under either of the aforesaid powers of appointment shall, in default of any direction to the contrary, be entitled to any share of the unappointed part of the trust funds without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot and accounting for the same accordingly: PROVIDED ALWAYS that the trustees may, after the deaths of the said A. and W., or in their his or her lifetime with their his or her consent in writing, raise any part or parts, not exceeding together one half of the then expectant or vested share of any child or remoter issue of the said A. and W. under the trusts aforesaid, and pay or apply the same for his or her advancement or benefit as the trustees shall in their discretion think fit: AND IT IS HEREBY agreed and declared that if there shall be no child of the said A. and W. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then (subject and without prejudice to the trusts aforesaid), the trustees shall hold the trust funds upon trust for the said A., his executors, administrators and assigns: AND IT IS HEREBY agreed and declared that until the sale of all the said premises the trustees shall pay the net rents thereof, or of such part as shall remain unsold, to the person or persons, and in the manner to whom and in which the income of the trust funds produced

by the sale thereof would for the time being be payable or applicable under the trusts aforesaid if such sale had then been made : AND IT IS HEREBY DECLARED that the said A. and W. during their joint lives, and the survivor of them during his or her life, shall have power to appoint new trustees of these presents.

MARRIAGE
SETTLE-
MENT OF
FREEHOLDS
BY WAY OF
TRUST FOR
SALE.

IN WITNESS, &c.

New trus-
tees.

III.

CONVEYANCE of part of the SETTLED LAND by TENANT for LIFE with the CONSENT of MORTGAGEES of the INHERITANCE and LIFE ESTATE, the TRUSTEES of the SETTLEMENT joining to give a RECEIPT for the PURCHASE MONEY (see sect. 20, *ante*, p. 67).

CONVEY-
ANCE OF
PART OF
SETTLED
LAND TO
A PUR-
CHASER.

THIS INDENTURE, made the — day of — BETWEEN Parties, A. of, &c. (*tenant for life*), of the first part, M. of, &c. (*mortgagee in fee*), of the second part, N. of, &c. (*mortgagee of life estate*), of the third part, X. of, &c., and Y. of, &c. (*Trustees of the settlement*), of the fourth part, and P. (*Purchaser*), of the fifth part. WHEREAS by an Indenture dated, &c., and made, &c. (being the settlement executed in contemplation of the marriage of the said A. and W. his present wife), the hereditaments hereinafter conveyed were (with other hereditaments) conveyed to the use of the said A. for life, with divers remainders over : AND WHEREAS by an Indenture dated, &c. and made, &c., the said A., in exercise of a power in that behalf reserved to him by the said settlement, conveyed the hereditaments comprised therein to the said M. and his heirs by way of mortgage to secure the sum of £—— then advanced to him by the said M. : AND WHEREAS by an Indenture dated, &c., and made, &c., the said A. conveyed the same hereditaments to the said N., his executors, administrators, and assigns, for the term of ninety-nine years if the said A. should so long live, together with certain policies of assurance therein mentioned, by way of mortgage to secure the sum of £—— then advanced to him by the said N. ; AND WHEREAS by an Order of appoint-

Recital of
settlement;

of mort-
gage in fee;

of mort-
gage on
life estate ;

CONVEY-
ANCE OF
PART OF
SETTLED
LAND
TO A PUR-
CHASER.

ment of
trustees.

Parcels.
Conveyance
freed from
mortgage
debts.

Acknow-
ledgment
and under-
taking.

of the High Court of Justice, dated, &c., and made by the Hon. Mr. Justice — at Chambers in the matter of the — Estates, in the County of —, settled by an Indenture dated, &c., and in the matter of the Settled Land Act, 1882, the said X. and Y. were appointed to be trustees under the settlement for the purposes of the said Act ; AND WHEREAS the said A. has agreed with the said P. for the sale to him of the hereditaments hereinafter conveyed at the price of £—: AND WHEREAS the said M. and N. being respectively satisfied with the security of the hereditaments remaining unsold have agreed to join in these presents in manner hereinafter expressed : NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreements, and in consideration of the sum of £— paid by the said P. to the said X. and Y. as trustees of the said settlement, the receipt whereof they hereby acknowledge, the said A. as tenant for life and beneficial owner, in exercise of the power conferred upon him by the Settled Land Act, 1882, and of all other powers enabling him in this behalf, hereby conveys, and the said M. and N. respectively (as to the estates or interests vested in them respectively as such mortgagees as aforesaid) as mortgagees, convey and release unto the said P. and his heirs, ALL THAT, &c. (*parcels*), TO HAVE AND TO HOLD the same unto and to the use of the said P. and his heirs freed and discharged from the said mortgage debts of £— and £—, and all claims and demands in respect thereof : And (b) the said A. hereby acknowledges the right of the said P. to the production of the documents of title mentioned in the schedule hereto, and to the delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

(b) If the title deeds are not in the custody of the tenant for life, a covenant for production must be inserted.

IV.

CONVEYANCE of a PIECE OF LAND by TENANT for LIFE under a WILL, the PURCHASE-MONEY being paid into COURT (see sect. 20, *ante*, p. 67).

CONVEY-
ANCE OF
PART OF
THE
SETTLED
LAND, THE
PURCHASE-
MONEY
BEING PAID
INTO COURT.

THIS INDENTURE, made, &c., BETWEEN A. of, &c. (*tenant for life*), of the one part, and P. of, &c. (*purchaser*), of the other part; WHEREAS T., late of, &c., by his will dated, &c., devised the hereditaments hereinafter conveyed unto and to the use of the said A. for life, with divers remainders over; AND WHEREAS the said T. died on the — day of — without having revoked or altered his said will, which was on the — day of — duly proved in the — Registry of the Probate Division of the High Court of Justice; AND WHEREAS the said A. has agreed with the said P. for the absolute sale to him of the said hereditaments for an estate in fee simple in possession free from incumbrances, at the price of £—; AND WHEREAS the said P. has paid into Court the said sum of £— and the same is now standing in the books at the Chancery Pay Office to the credit of "*Ex parte A.*, in the matter of The Settled Land Act, 1882, the proceeds of sale of settled land under the will of T. deceased." NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said sum of £— paid into Court as aforesaid, the said A. as tenant for life and beneficial owner, in exercise of the power conferred upon him by the Settled Land Act, 1882, and of all other powers enabling him in this behalf, hereby conveys unto the said P. and his heirs, all that piece of land in the parish of —, and the county of —, comprising — acres or thereabouts, known as "The Laurels" TO HAVE AND TO HOLD the same unto and to use of the said P. and his heirs. And the said A. hereby (*acknowledgment and undertaking as to title deeds as in No. III., ante*, p. 160).

Testatum.

Habendum.

IN WITNESS, &c.

V.

CONVEY-
ANCE TO
USES OF
SETTLE-
MENT.

CONVEYANCE *to the Uses of a STRICT SETTLEMENT, the PURCHASE being made with CAPITAL MONEY arising under the SETTLED LAND ACT (see sect. 24, ante, p. 81).*

Parties. THIS INDENTURE, made, &c., BETWEEN V. of, &c. (*vendor*), of the first part, X. of, &c., and Y. of, &c. (*trustees of the settlement*), of the second part, and A. of, &c. (*tenant for life*), of the third part ; WHEREAS under an indenture of settlement dated, &c., and made, &c., the said A. is tenant for life of the hereditaments comprised therein ; AND WHEREAS by an Order of the High Court of Justice dated, &c., the said X. and Y. were duly appointed trustees under the said settlement for the purposes of the Settled Land Act, 1882 ; AND WHEREAS, the said A. has directed the said X. and Y. to apply the sum of £—— in their hands (being capital money arising under the said Act in respect of the settled land comprised in the said settlement), in the purchase of land in fee simple to be conveyed to the uses of the said settlement ; AND WHEREAS, in pursuance of such direction the said X. and Y. have agreed with the said V. for the purchase of the hereditaments hereinafter conveyed and the inheritance thereof in fee simple at the price of £——. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £——, by the direction of the said A., paid by the said X. and Y. to the said V., the receipt whereof he doth hereby acknowledge, the said V. as beneficial owner, in pursuance of the directions in that behalf contained in the said Act, hereby conveys unto the said X. and Y. and their heirs, ALL THAT (*parcels*), To HAVE AND TO HOLD the same unto the said X. and Y. and their heirs, To THE USES, upon the trusts, and subject to the powers and provisions which under the said settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, but not so as to increase or multiply charges or powers of charging.

IN WITNESS, &c.

VI.

CONVEYANCE *on SALE by a MARRIED WOMAN entitled for her SEPARATE USE without power of ANTICIPATION* (see sect. 61, *ante*, p. 139).

CONVEY-
ANCE BY
MARRIED
WOMAN.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
W. the wife of A. of, &c. (*tenant for life*), of the first part, X.
of, &c., and Y. of, &c. (*trustees of the settlement*), of the second
part, and P. of, &c. (*purchaser*), of the third part; WHEREAS
(*Recite will of T., whereby premises were demised to the use of W. Recitals.*
for her life for her separate use without power of anticipation (a);
the death of T., and probate of his will), AND WHEREAS, by an
Order of the High Court of Justice dated the — day of —
the said X. and Y. were duly appointed trustees under the said
will for the purposes of the Settled Land Act, 1882; AND
WHEREAS the said W. has agreed with the said P. for the sale
to him of the hereditaments hereinafter conveyed (being part
of the hereditaments devised by the said will to the said W. for
her life as aforesaid), at the price of £—; NOW THIS
INDENTURE WITNESSETH that in pursuance of the said Testatum.
agreement, and in consideration of the sum of £—, by the
direction of the said W. paid by the said P. to the said X.
and Y., the receipt whereof they hereby acknowledge, she the
said W., as tenant for life under the said will, and as beneficial
owner, hereby conveys unto the said P., and his heirs, ALL
THAT, &c. (*parcels*), TO HAVE AND TO HOLD the same unto and Parcels.
to the use of the said P. and his heirs.

IN WITNESS, &c.

(a) It is assumed that the limitations are legal, as they may now be in such a case under the Married Women's Property Act, 1882. If, however, the legal estate is vested in trustees they should join in the conveyance, and covenant against incumbrances by conveying "as trustees."

VII.

**MORTGAGE
BY TENANT
FOR LIFE
FOR COSTS.**

MORTGAGE *by the TENANT for LIFE of part of the SETTLED LAND, for the purpose of raising MONEY for payment of COSTS, under an ORDER of the COURT* (see sect. 47, *ante*, p. 117).

Parties. THIS INDENTURE, made the — day of —, BETWEEN A. of, &c. (*tenant for life*), of the first part; X. of, &c., and Y. of, &c. (*trustees of the settlement*), of the second part; and M. of, &c. (*mortgagee*), of the third part; WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter demised, were with other hereditaments limited from and after the then intended marriage of the said A., which was shortly after solemnized, to the use of the said A. during his life, with divers remainders over; and a power of selling the said hereditaments with the consent of the said A. was thereby conferred upon the said X. and Y.; AND WHEREAS by an Order of the High Court of Justice dated, &c., and made on the petition of the said A., in the matter of, &c., it was ordered that the costs of all parties to that application should be taxed as therein mentioned, and that the amount of such taxed costs should be raised by mortgage of the whole or any part of the settled land, and that the said A. should be empowered to limit the settled land or any part thereof for a term of a 1000 years by way of mortgage to secure the repayment of such amount, and that such sum should be paid to the said X. and Y. and applied by them in payment of such costs as aforesaid; AND WHEREAS the said costs have been taxed at the sum of £—, as appears from the certificate of the taxing master dated the — day of —; AND WHEREAS the said A. has requested the said M. to advance the said sum of £— for payment of such costs which he has agreed to do on having the repayment thereof with interest at the rate of £5 per cent. per annum secured in the manner hereinafter mentioned;

Recitals.

Testatum. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said order and agreement, and in consideration of the sum of £—, paid by the said M., at the request and by the direction of the said A., to the said X. and Y. as the trustees of the said settlement, the receipt whereof the said X. and Y. hereby acknowledge, the said A. doth hereby, as bene-

ficial owner, demise unto the said M. ALL THAT, &c. (*parcels*),
 To HAVE AND TO HOLD the same unto the said M. for the term
 of 1000 years computed from the date of these presents, sub-
 ject to the proviso hereinafter contained : that is to say, that
 if the said A., or the person for the time being entitled to the
 settled land for any estate or interest in possession, or the trustees
 of the settlement for the time being shall on the — day of —
 next pay to the said M., or the persons claiming under him, the
 sum of £—— with interest thereon after the rate of £5 per
 cent. per annum, computed from the date of these presents,
 then these presents and the demise hereby made shall cease
 and become void ; AND THIS INDENTURE ALSO WIT-
 NESSETH that for the consideration aforesaid the said A. hereby
 covenants with the said M. that he the said A. will during his
 life pay to the said M. interest on the said sum of £—— or on
 so much thereof as shall for the time being remain unpaid after the
 rate aforesaid.

MORTGAGE
 BY TENANT
 FOR LIFE
 FOR COSTS.

Parcels.
 Proviso for
 cesser of
 term.

Covenant
 for pay-
 ment of
 interest by
 tenant for
 life.

IN WITNESS, &c.

VIII.

MORTGAGE of part of the SETTLED LAND to raise MONEY
 for EQUALITY of EXCHANGE under sect. 18 (see
ante, p. 65).

MORTGAGE
 BY TENANT
 FOR LIFE
 FOR
 EQUALITY
 MONEY.

THIS INDENTURE, made, &c., BETWEEN A. of, &c.
 (*tenant for life*), of the first part, X. of, &c. and Y. of, &c.
 (*trustees of the settlement*), of the second part, and M. of, &c.
 (*mortgagee*), of the third part : WHEREAS (*Recite settlement so
 far as to show that A. is tenant for life, and X. and Y. trustees
 of the settlement*) : AND WHEREAS the said A. has entered into
 a contract for the exchange of part of the hereditaments com-
 prised in the said settlement for other hereditaments of greater
 value, and in order to carry out the said contract the sum of
 £—— is required for equality of exchange ; AND WHEREAS the
 said A. has applied to the said M. to advance to the said X.
 and Y. the sum of £—— for the purpose of paying for such
 equality of exchange as aforesaid, which the said M. has con-

Parties.

Recitals.

MORTGAGE BY TENANT FOR LIFE FOR EQUALITY MONEY. sented to do upon having the repayment thereof, with interest after the rate of £—— per cent. per annum secured to him in the manner hereinafter expressed : **NOW THIS INDENTURE WITNESSETH** that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the said M., at the request of the said A., to the said X. and Y. as trustees of the said settlement, the receipt whereof the said X. and Y. hereby acknowledge, the said A., in exercise of the power conferred upon him by the Settled Land Act, 1882, and of all other powers enabling him in this behalf, as beneficial owner hereby conveys to the said M. and his heirs all that, &c. (*parcels*), **TO HAVE AND TO HOLD** the same unto and to the use of the said M. and his heirs, subject to the proviso for redemption hereinafter contained, (that is to say) that if the said A., or any person entitled to an estate or interest in the hereditaments and premises hereby conveyed under or by virtue of the said settlement, shall on the —— day of —— next pay to the said M., his executors, administrators or assigns the sum of £—— with interest thereon after the rate of £—— per cent. per annum, then the said M., or the person claiming under him will, at the request and cost of the said A., or other the persons entitled as aforesaid, reconvey the said hereditaments and premises to the uses, on the trusts and subject to the powers and provisions which under the said settlement shall be then subsisting with respect to the settled land, or as near thereto as circumstances will permit.

Testatum.

Parcels. Habendum.

Proviso for redemption.

IN WITNESS, &c.

IX.

TRANSFER OF AN INCUMBRANCE BY TENANT FOR LIFE.

TRANSFER of an INCUMBRANCE from LAND intended to be SOLD to other LAND comprised in the SETTLEMENT under sect. 5 (see *ante*, p. 40).

Parties. Recitals.

THIS INDENTURE, made the —— day of ——, BETWEEN A. of, &c. (*tenant for life*), of the one part, and M. of, &c. (*mortgagee*), of the other part ; WHEREAS the said M. is under an Indenture of mortgage, dated, &c., and made between, &c.,

and an Indenture of transfer of mortgage, dated, &c., and made between, &c., entitled to a charge or mortgage on the hereditaments comprised therein for the sum of £—— and interest ; AND WHEREAS the said hereditaments, and the hereditaments described in the schedule hereunder written, are subject to the limitations of a settlement dated, &c., under which the said A. is tenant for life thereof ; AND WHEREAS the said A. in exercise of the powers conferred upon him by the Settled Land Act, 1882, is desirous of selling the hereditaments comprised in the said Indenture of mortgage, and has requested the said M. to join in the conveyance thereof so as to release the same from the said mortgage debt ; AND WHEREAS the said M. has consented to join in such conveyance as aforesaid upon the terms of his mortgage debt being transferred to, and charged upon the hereditaments described in the schedule hereunder written in manner hereinafter mentioned : NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, the said A., with the consent of the said M., and in exercise of the powers conferred upon him in this behalf by the Settled Land Act, 1882, doth hereby charge the said mortgage debt upon the hereditaments described in the schedule hereunder written in exoneration of the hereditaments comprised in the said Indenture of mortgage ; AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and in exercise of the powers conferred upon him by the said Act, the said A., as beneficial owner, doth hereby convey unto the said M. and his heirs all the hereditaments described in the said schedule, TO HAVE AND TO HOLD the same unto and to the use of the said M. and his heirs, subject nevertheless to the same right of redemption, and to the same provisoes, declarations, stipulations, and agreements as are contained in the said Indenture of mortgage with reference to the hereditaments comprised therein.

TRANSFER
OF AN
INCUM-
BRANCE BY
TENANT
FOR LIFE.

Testatum.

Charge of
mortgage
debt on
land in
schedule.

Convey-
ance of
lands to
secure
mortgage
debt.

IN WITNESS, &c.

X.

TRANSFER
OF AN
INCUM-
BRANCE BY
TENANT
FOR LIFE,
ANOTHER
FORM.

TRANSFER of an INCUMBRANCE from LAND intended to be SOLD to other LAND comprised in the SETTLEMENT under sect. 5, by a DEED supplemental to the MORTGAGE. (See ante, p. 40, and the Conveyancing Act, 1881, s. 53.)

Parties. THIS INDENTURE, made the — of —, BETWEEN A. of, &c. (*tenant for life*), of the one part, and M. of, &c. (*the incumbrancer*), of the other part, supplemental to an indenture of mortgage, dated the — day of —, and made between,

Recitals. &c.; WHEREAS, by an Indenture of settlement, dated the — day of —, and made between, &c., the hereditaments comprised in the said mortgage were, subject to the said mortgage thereon, conveyed with other hereditaments to the use of the said A. for life, with divers remainders over; AND WHEREAS [*recite changes of ownership in mortgage debt, so as to show the title of M. thereto*]; AND WHEREAS the said A. has, in exercise of the powers conferred upon him by the Settled Land Act, 1882, entered into a contract for the sale of the said hereditaments; AND WHEREAS it has been agreed between the said A. and M. that the said M. should exonerate the said hereditaments from the said mortgage debt, and should accept in lieu thereof the security of the hereditaments hereinafter conveyed, being part of the settled land comprised in the said Indenture of settlement, as a substituted security for the same; NOW

Testatum. THIS INDENTURE WITNESSETH, that in pursuance of the said agreement the said A., with the consent of the said M., and in exercise of the power in this behalf conferred upon him by the Settled Land Act, 1882, as tenant for life

Charge of mortgage debt. under the said Indenture of settlement, doth hereby charge the said mortgage debt of £— and interest thereon at the rate of £— per cent. per annum on the hereditaments hereinafter conveyed in exoneration of the hereditaments so contracted to be sold as aforesaid; AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, the said A., as beneficial owner, doth hereby convey to the said M. and his heirs; ALL THAT, &c. (*the substituted lands*), To HAVE AND TO HOLD the same unto

Convey-
ance of
premises.

and to the use of the said M. and his heirs, subject to the proviso for redemption and to the powers, provisoes, declarations, and agreements contained in the said Indenture of mortgage so far as the same are now subsisting or capable of taking effect ; AND IT IS HEREBY DECLARED that it is the intention of the parties hereto that these presents shall operate so as to substitute the hereditaments hereby conveyed for the hereditaments comprised in the said Indenture of mortgage.

TRANSFER
OF AN
INCUM-
BRANCE BY
TENANT
FOR LIFE,
ANOTHER
FORM.

Subject to
redemp-
tion.

IN WITNESS, &c.

XI.

DISENTAILING DEED *by* TENANT *in* TAIL *in* pos-
session of CAPITAL MONEY *in* Court *with a view to*
obtaining PAYMENT *thereof as a person* ABSOLUTELY
ENTITLED *under* *sect. 21.*

DISEN-
TAILING
DEED
OF CAPITAL
MONEY.

THIS INDENTURE, made, &c., BETWEEN S. of, &c. (*tenant in tail*), of the one part, and G. of, &c. (*grantee to uses*), of the other part; WHEREAS the said S. is tenant in tail in possession under the limitations of a settlement dated, &c.; AND WHEREAS there is in Court to the credit of "*Ex parte* A., the account of the capital money of a settlement dated the — day of —," a sum of £— representing capital money arising under the Settled Land Act, 1882, in respect of the hereditaments comprised in the said settlement; NOW THIS INDENTURE WITNESSETH that the said S. hereby conveys unto the said G. and his heirs (*a*) the said sum of £—, TO HAVE AND TO HOLD the same freed and discharged from the estate tail of the said S. and all remainders, estates, interests and powers to take effect after the determination or in defeasance of the said estate tail, TO THE USE of the said S. and his heirs.

IN WITNESS, &c.

(*a*) The capital money is "for all purposes of disposition, transmission and devolution," to be considered as land : s. 22.

XII.

LICENCE
TO COPY-
HOLDER.

LICENCE *by tenant for life of a MANOR to Copyholder to LEASE for ninety-nine years, with a PROVISIO fixing the ANNUAL SUM upon which the FINES are to be assessed during the TERM.*

Manor of —, in the } I, A. of &c., tenant for life of
county of —. } the manor of —, in the county of
—, do hereby by virtue of the powers in that behalf conferred
upon me by the Settled Land Act, 1882, hereby licence B. of,
&c., one of the copyhold tenants of the said manor to demise
the tenement to which he was admitted on the — day of
— to C. of, &c., for the term of ninety-nine years from the
— day of — next ; And I hereby declare that during
the said term the sum of £— shall be considered as the
annual value for assessing the fines payable to the lord of the
manor upon the admission of any new tenant to the said tene-
ment, and this licence shall be entered on the court rolls of the
said manor within six calendar months from the date hereof,
otherwise the same shall be void and of no effect, reserving
nevertheless unto the lord all fines, heriots, rents, customs, and
services, due and to grow due in respect of the said tenement.

As witness my hand this — day of —.

XIII.

PETITION *by the TENANT FOR LIFE and the TRUSTEES of the SETTLEMENT for powers of granting BUILDING LEASES on LONG TERMS in accordance with the custom of the district where the SETTLED LAND is situated (see sect. 10, ante, p. 51).*

IN THE HIGH COURT OF JUSTICE.
Chancery Division.

Mr. Justice —.

In the matter of the Trusts of a Settlement dated

the —— day of ——, under which A. is tenant for life;

and

In the matter of the Settled Land Act, 1882.

To Her Majesty's High Court of Justice.

The humble petition of A. of, &c. (*tenant for life*), of X. of, &c., and Y. of, &c. (*trustees of the settlement*),

Sheweth as follows :—

1. By an Indenture dated, &c., and made between the petitioner A. of the first part, W. the wife of the petitioner A., therein described as B., of the second part, and the petitioners X. and Y. of the third part, being the settlement executed prior to and in contemplation of the marriage shortly afterwards solemnized between the petitioner A. and W. his wife, all that piece or parcel of ground in the parish of ——, and county of ——, was conveyed unto and to the use of the said X. and Y. and their heirs, upon trust for sale and investment as therein mentioned ; and it was thereby declared that the said X. and Y. should hold the moneys to arise from such sale, and the investments thereof, upon trust, to pay the annual income to the petitioner A. during his life, and after his death, upon trust for the persons therein mentioned : And it was also thereby declared that, until sale of the said hereditaments, the rents and profits thereof should be applied in the same manner as the income of the proceeds of sale.
2. The hereditaments comprised in the said Indenture of settlement are situate in the immediate vicinity of the town of —— and are suitable to be laid out in plots for building purposes, but owing to the circumstances detailed in the next paragraph it has been found impracticable so to dispose of the settled land or any part thereof, and the same is now unproductive.
3. It is the custom in the neighbourhood of the said town of —— that all leases for building purposes should be granted for a term of 999 years, and it is difficult to let any part of the settled land for the purposes aforesaid except upon leases for such a term.

4. The petitioner A. is desirous under the circumstances aforesaid that he should be authorized by the order of this Honourable Court to grant building leases of the settled land for terms of 999 years in accordance with the custom of the said district, and that the petitioners X. and Y., or the trustees for the time being of the said settlement, should be empowered after the death of the petitioner A. to grant leases on the like terms.

The petitioners therefore pray as follows :—

1. That the petitioner A. may be authorized to grant building leases of the settled land for terms not exceeding 999 years, but otherwise in conformity with the provisions of the Settled Land Act, 1882.
2. That the petitioners X. and Y. may be authorized to grant leases on the like terms after the death of the petitioner A.
3. That the costs of this application, including therein any charges and expenses of the petitioners X. and Y., may be taxed as between solicitor and client, and that the amount of such costs, charges, and expenses when so taxed as aforesaid, may be declared to be a charge upon the settled land, and that the petitioners X. and Y. may be at liberty to raise the same by sale or mortgage of the settled land.
4. Such further or other relief as the nature of the case may require.

NOTE.—It is not intended to serve this petition upon any person.

XIV.

PETITION *for the* APPOINTMENT of “TRUSTEES of the SETTLEMENT” (see sect. 28, *ante*, p. 106).

[*Title as in Form XIII.*]

1. T., late of, &c., by his will dated, &c., devised all his real estate to G. and H., and their heirs upon trust to pay the rents and profits thereof to his wife W. during her life, and after her decease to his daughter, the petitioner

A., the wife of —, during her life, for her separate use without power of anticipation ; and after the deaths of the said W. and A. upon trust for sale as therein mentioned.

2. The said T. died on the — day of — without having revoked or altered his said will, which was on the — day of — duly proved in the — District Registry of the Probate Division of the High Court of Justice by the executors named therein.
3. The said G. and H. by a deed poll under their hands and seals, dated the — day of —, disclaimed and renounced all the real estate devised to them as aforesaid, and also the office of trustees of the said will.
4. The said W. died on the — day of —.
5. The property included in the said devise and now subject to the trusts of the said will consists of the following particulars :—
[*Set forth concisely a description of the property.*]
6. The petitioner is desirous that X. of, &c., and Y. of &c., who are fit and proper persons for the purpose, should be appointed trustees under the said will for the purposes of the Settled Land Act, 1882.
7. The said X. and Y. have, by writing under their hands, signified their consent to become such trustees as aforesaid.

The petitioner therefore humbly prays as follows :—

1. That the said X. and Y. may be appointed trustees under the will of the said T. deceased for the purposes of the Settled Land Act, 1882.
2. That the said X. and Y. may be at liberty, out of the first capital money arising under the said Act, and coming to their hands as such trustees as aforesaid, to pay to the petitioner her costs of and relating to this application and consequent thereon.
3. Such further or other relief as the nature of the case may require.

NOTE.—It is not intended to serve this petition upon any person.

XV.

PETITION *for the APPOINTMENT of TRUSTEES of a WILL*
by the TESTAMENTARY GUARDIAN of an INFANT
 (see sects. 38, 60, *ante*, pp. 106, 137).

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice —.

In the matter of the Estates settled by T. (or T. and others) by will dated — (or deed dated —) consisting of certain lands (*or messuages or tenements*) in — in the Parish of —, in the County of — (*a*),

and

In the matter of the Settled Land Act, 1882.

To Her Majesty's High Court of Justice.

The humble petition of W. of, &c.,

Sheweth as follows :—

1. T. late of —, by his will dated, &c., devised and bequeathed all his freehold and leasehold estates in the County of — to his children in equal shares with benefit of survivorship as therein mentioned, and he appointed the petitioner guardian of the persons and estates of such of his children as should be infants at the time of his death.
2. The said T. died on the — day of —, and his said will with two codicils thereto, which did not affect the said devise and bequest, or the appointment of a guardian to his infant children as aforesaid, were on the — day of — duly proved in the principal Registry of the Probate Division of the High Court of Justice by the executors named therein.
3. The said T. left him surviving three children and no more, that is to say, A., B., and C., who are all still living ;

(*a*) This part of the Title is taken from "The Settled Estates Act, Orders, 1878," Appendix, Form 1, as to which see *post*, p. 192, where other forms will be found.

the said A. and B. have attained the age of twenty-one years, and the said C. is an infant of the age of eighteen years or thereabouts.

4. The estates comprised in the said devise and bequest consisted of the following particulars :—
 - (a.) A mansion house and park of two hundred acres or thereabouts, known as — House, of which the said T. was seised in fee simple.
 - (b.) A farm of five hundred acres or thereabouts, known as the Home Farm, usually occupied with the said mansion house, of which the said T. was seised in fee simple.
 - (c.) A farm called —, held on a lease of which about forty years are unexpired.
5. The said A. and B. are desirous of letting the said Home Farm to a suitable tenant who has made an advantageous offer for the same, and are also desirous of renewing certain underleases of the said — farm which have recently expired ; but in consequence of the infancy of the said C. the said objects cannot be carried into effect except with concurrence of trustees duly appointed.
6. Under the circumstances aforesaid it is desirable that trustees should be appointed of the undivided share of the said C. to exercise on his behalf the powers of the Settled Land Act, 1882.
7. X. and Y., who are fit and proper persons for the purpose, have by writing under their hands signified their consent to act as such trustees.

The petitioner therefore humbly prays as follows :—

1. That the said X. and Y. may be appointed trustees under the will of the said T. deceased, of the share or interest of the said infant for the purposes of the Settled Land Act, 1882.
2. That the costs of this application may be taxed, and the amount of such costs declared to be a charge upon the share or interest of the said infant in the settled land.
3. Such further or other relief as the nature of the case may require.

NOTE.—It is not intended to serve this petition upon any person.

XVI.

PETITION *for application of* MONEY *in Court under the*
LANDS CLAUSES CONSOLIDATION ACT *in* PART PAY-
MENT *for* IMPROVEMENTS (see sect. 32, *ante*, p. 99).

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice —.

Ex parte A. (tenant for life).

In the matter of the trusts of the will of T. deceased,
dated the — day of —,

In the matter of (*the special Act under which the
money has been paid into Court*),

In the matter of the Lands Clauses Consolidation
Act, 1845,

and

In the matter of the Settled Land Act, 1882.

To Her Majesty's High Court of Justice.

The humble petition of A. of, &c.,

Sheweth as follows :—

1. [*State will of T. so as to show that A. is tenant for life of the settled land.*]
2. [*Death of T. and probate of his will, ante*, p. 173.]
3. There is no power of sale in the said will, and no persons were appointed thereby trustees for the purposes of the Settled Land Act, 1882.
4. A portion of the said settled estate having been required by the — Company for the purposes of their undertaking a notice to treat for the purchase thereof was on the — day of — duly served on the petitioner.
5. The purchase-money or compensation to be paid by the said company in respect of the said land required by them as aforesaid, was duly settled by arbitration at the sum of £— ; and on the — day of — the said Company paid the said sum of £— into Court to the credit of "*Ex parte A.*, in the matter of (*the special*

Act), purchase-money of lands whereof A. was tenant for life."

6. By an Order of the High Court of Justice dated the — day of — made on the petition of the present petitioner, in the three firstly above mentioned matters, the said sum of £—— so paid into Court as aforesaid was ordered to be laid out in the purchase of Consolidated £3 per cent. Annuities (a), to be placed to the like credit.
7. In pursuance of the said Order the said sum of £—— was invested in the purchase of £—— Consolidated £3 per cent. Annuities, and the same now stands in the books of the Bank of England to the credit of the said account.
8. There is also in Court to the credit of "*Ex parte A.*, tenant for life of settled land under the will of T. deceased, the account of the capital money arising under the Settled Land Act, 1882," a sum of £—— cash representing the purchase-money of part of the settled land.
9. By an Order of the High Court of Justice dated the — day of — and made by Mr. Justice — at Chambers a certain scheme submitted by the petitioner for the improvement of the estate by the erection of labourers' cottages [*or as the case may be*] was duly approved.
10. A large part of the work comprised in the said scheme has been already executed, and the Land Commissioners by a certificate under their seal have certified that such part has been properly executed, and that a sum of £—— is properly payable to the petitioner in respect thereof.
11. The petitioner is desirous that the said sum of £—— Consolidated £3 per cent. Annuities, and so much of the said sum of £—— cash in Court as may be necessary, may be applied in payment to him of the said sum of £—— expended by him as aforesaid.

The petitioner therefore humbly prays as follows:—

1. That the said sum of £—— Consolidated £3 per cent. Annuities standing to the credit of

(a) The 32nd section of the Settled Land Act only mentions "money" in Court, but it is presumed that it applies when an order has been made for interim investment.

"*Ex parte A.*, in the matter of (the Special Act). Purchase-money of lands whereof A. was tenant for life," may be sold, and that the money produced by such sale, together with so much of the said sum of £—— cash in Court to the credit of *Ex parte A.*, tenant for life of settled land under the will of T. deceased, the account of the capital money arising under the Settled Land Act, 1882," as will make up the sum of £—— may be ordered to be paid to the petitioner.

2. That the costs, charges, and expenses of the petitioner now remaining unpaid relative to the said purchase of the said land by the —— Company, and also the costs of this application and consequent thereon, may be taxed ; and that such costs, charges, and expenses when so taxed may be paid to the petitioner by the said Company.
3. Such further or other relief as the nature of the case may require.

NOTE.—It is intended to serve this Petition on the —— Company.

XVII.

PETITION by TRUSTEES of a SETTLEMENT for directions respecting a "difference" between them and the tenant for life (see sect. 44, *ante*, p. 112).

[Title as in Form XV.]

1. [State shortly the limitations of the Settlement so far as to show that A. is tenant for life, and X. and Y. trustees of the settlement.]
2. The petitioners X. and Y. on the —— day of —— received notices from the said A. of his intention to sell part of the property comprised in the said settlement.

Such notices were identical in their terms and were in the words and figures following (that is to say) :—

“ Take notice that I intend to make a sale of the ——— Farm, in the county of ———, settled by an Indenture dated, &c., of which you are a trustee.

Signed “ A., tenant for life.”

3. The petitioners X. and Y. thereupon wrote to the said A. requesting some particulars as to the reserved price which he intended to put upon the property, and remonstrating with him for selling at a time when land in the said county was so much deprecatd in value.
4. In answer to the said request and remonstrance the said A. declined to furnish any information, and stated that as he was tenant for life he could do as he liked, and that the matter did not concern the petitioners X. and Y., whose duty it was simply to receive the purchase-money.
5. The petitioners X. and Y. have caused inquiries to be made in the neighbourhood of the said property, and they are informed and believe that negotiations are in progress for the sale of the said farm at a disastrous sacrifice.
6. There is a sum of £—— Consols standing in the names of the petitioners X. and Y., representing capital money arising under the Settled Land Act, 1882.
7. The petitioners X. and Y. are desirous that directions may be given by the Court in respect of the matters aforesaid.

The petitioners therefore humbly pray as follows :—

1. That the said A. may be directed, before making any sale of the said property, or entering into any contract in respect thereof, to furnish to the petitioners full information as to the price to be obtained, and other matters relating thereto.
2. That if necessary an inquiry may be directed as to the value of the said ——— Farm, and that the sum to be so ascertained may be fixed as the minimum price for which the said farm may be sold by the said A.

3. That the costs of all parties (*a*), including in the costs of the petitioners any charges and expenses properly incurred by them, may be taxed as between solicitor and client.
4. That the petitioners may be at liberty to sell a sufficient part of the said sum of £—, Consols, and pay therewith the said costs, charges, and expenses when so taxed as aforesaid.
5. Such further or other relief as the nature of the case may require.

NOTE.—It is intended to serve this Petition on the said A.

XVIII.

SUMMONS *for the* APPOINTMENT *of* TRUSTEES *of the* SETTLEMENT (see sect. 38, *ante*, p. 106).

IN THE HIGH COURT OF JUSTICE.
Chancery Division.

In the Matter of trusts of the will of T. deceased,
dated the — day of —, so far as the same
relate to a farm called —, situate in the parish
of —, and the county of —,

and

In the Matter of the Settled Land Act, 1882.

Let all parties attend the Judge in Chambers on — day,
the — day of —, 1883, at — o'clock in the — noon,
on the hearing of an application on the part of A. (*tenant for*
life), that X. and Y. may be appointed trustees under the will

(*a*) The Court under s. 44 has a special discretion as to costs; and where the tenant for life behaves unreasonably, he will probably not be allowed, or perhaps be ordered to pay, the costs of the application.

of T., the above-mentioned testator, for the purposes of the Settled Land Act, 1882.

Dated the — day of —, 1883.

This summons was taken out by — of —, solicitor for the said A.

XIX.

SUMMONS *for the APPOINTMENT of persons to exercise the powers of the Act on behalf of an INFANT* (see sect. 60, *ante*, p. 137).

IN THE HIGH COURT OF JUSTICE.
Chancery Division.

In the Matter of A., an infant,
and

In the Matter of the Settled Land Act, 1882.

Let all parties, &c. (as in Form XVIII., *ante*, p. 180), on the hearing of an application on the part of W., the mother and testamentary guardian of the above-named infant, that X. and Y. may be appointed to exercise the powers of the above-mentioned Act on behalf of the said infant.

Dated, &c. (*as in Form XVIII., ante*, p. 180).

XX.

SUMMONS *for DIRECTIONS as to enforcing a CONTRACT entered into by the tenant for life* (see sect. 31, *ante*, p. 96).

IN THE HIGH COURT OF JUSTICE.
Chancery Division.

In the Matter of a contract dated the — day of
—, between A. (*tenant for life*), and P. (*pur-*

chaser), for sale of part of the land settled by
an Indenture, dated the — day of —,

and

In the Matter of the Settled Land Act, 1882.

Let all parties, &c. (as in Form XVIII., *ante*, p. 180), on
the hearing of an application on the part of A. for directions
as to enforcing specific performance of the above-mentioned
contract.

Dated, &c. (*as in* Form XVIII., *ante*, p. 180).

XXI.

SUMMONS *for the APPROVAL of a SCHEME for the EXECUTION of IMPROVEMENTS on the SETTLED LAND*
(see sect. 26, *ante*, p. 87).

IN THE HIGH COURT OF JUSTICE.
Chancery Division.

In the Matter of the Estates settled by the Will of
T. deceased, dated the — day of —,

and

In the Matter of the Settled Land Act, 1882.

Let all parties, &c. (as in Form XVIII., *ante*, p. 180), on the
hearing of an application on the part of A. tenant for life of
the above-mentioned estates, that a scheme for the execution
of certain improvements thereon may be approved by the
Court.

Dated, &c. (*as in* Form XVIII., *ante*, p. 180).

XXII.

RECITAL of a STRICT SETTLEMENT.

RECITAL OF
STRICT
SETTLE-
MENT.

WHEREAS by an Indenture dated the — day of —, and made between, &c., certain hereditaments in the County of —, therein more particularly described were limited to the use of the said A. during his life without impeachment of waste ; with remainder to the use that the said W. should receive a jointure rent-charge of £— during her life, with remainder to the use of trustees for a term of 500 years to secure portions for younger children as therein mentioned; with remainder to the first and other sons of the said A. successively according to seniority in tail male ; with an ultimate remainder to the heirs of the said A.

XXIII.

RECITAL of a SETTLEMENT of REAL ESTATE by WAY of TRUST for SALE.

SETTLE-
MENT BY
WAY OF
TRUST FOR
SALE.

WHEREAS by an Indenture dated the — day of —, and made between, &c., the hereditaments hereinafter conveyed were with other hereditaments therein mentioned conveyed unto and to the use of X. and Y. and their heirs upon trust for sale as therein mentioned, AND WHEREAS by an Indenture bearing even date with, and made between the same parties as the lastly recited Indenture, it was declared that the said X. and Y., or other the trustees for the time being of the said Indenture, should stand possessed of the proceeds of such sale upon trust for investment as therein mentioned; and should pay the income thereof to the said A. during his life, and after his death to the said W. during her life, and after the death of the survivor of the said A. and W., should stand possessed of the trust funds for the children of the said A. and W., as they should by deed jointly appoint; and subject thereto as the survivor of the said A. and W. should by deed or will appoint;

**SETTLEMENT BY
WAY OF
TRUST FOR
SALE.**

and subject thereto for all the children of the said A. and W. who being sons should attain the age of twenty-one years, or being daughters should attain that age or marry: AND it was also thereby declared that the said trustees should apply the rents and profits of the said hereditaments until sale, or of such part thereof as should for the time being remain unsold, in the same manner as was thereinbefore declared concerning the income of the proceeds of sale (a).

XXIV.

**TRANSFER
OF AN
INCUM-
BRANCE.**

**RECITAL of the TRANSFER of an INCUMBRANCE from the
LAND SOLD to ANOTHER PART of the SETTLED LAND.**

WHEREAS by an Indenture dated, &c., and made between the said A. (*tenant for life*) of the one part, and the said M. (*mortgagee*) of the other part, the said A. with the consent of the said M. charged the said mortgage debt of £—— on certain hereditaments comprised in the said Indenture of settlement and limited to the same uses and upon the same trusts as the hereditaments intended to be hereby conveyed in exoneration of such lastly mentioned hereditaments: AND thereby conveyed the hereditaments thereby charged to the said M. and his heirs by way of mortgage to secure the said sum of £—— and interest as therein mentioned.

XXV.

**MORTGAGE
IN FEE.**

RECITAL of a MORTGAGE in FEE.

WHEREAS by an Indenture dated, &c., the hereditaments hereinafter described and intended to be hereby conveyed were (with other hereditaments) granted and conveyed to M. and his heirs by way of mortgage to secure the repayment of the sum of £—— and interest, subject to the proviso for redemption therein contained.

(a) The extent to which any instrument is to be recited depends upon the circumstances of each particular case. If, for example, the first tenant for life is exercising any of the powers of the Act, it will in general be unnecessary to carry the recital beyond his life estate,

XXVI.

RECITAL *of a MORTGAGE for a TERM of YEARS.*

MORTGAGE
FOR A
TERM OF
YEARS.

WHEREAS by an Indenture dated, &c., the hereditaments comprised in the said settlement were assigned to M. by way of mortgage for a term of 1000 years to secure the sum of £—— and interest subject to the proviso determining the said term therein contained.

XXVII.

RECITALS *in a LEASE of MATTERS of FACT or CALCULATION under SECT. 7 (5).*

CONCLUSIVE
RECITAL IN
LEASE.

AND WHEREAS the said L. has erected on the premises hereinafter demised a messuage in accordance with his agreement in that behalf [*or has expended the sum of £—— in the repair of the premises intended to be hereby demised*]

[*or has executed an improvement authorized by the Settled Land Act, 1882, upon the premises intended to be hereby demised in connexion with building purposes*].

AND WHEREAS the total amount of the rents reserved upon the leases already granted in pursuance of the said agreement is not less than the total amount of the rents which in order that the leases may be in conformity with the Settled Land Act ought to be reserved in respect of the whole land thereby demised; and the rent hereinafter reserved in respect of the premises hereby demised does not exceed one-fifth part of the full annual value of the land hereby demised with the buildings thereon when the same shall be completed.

ANOTHER
FORM.

XXVIII.

CONCLUSIVE
STATEMENT.

STATEMENT *to be* INDORSED *on a* LEASE *and* SIGNED
by TENANT *for* LIFE *under* SECT. 7 (5).

The lessee has expended the sum of £—— in the repair of
the premises demised by the within-written Indenture.

Signed A. (*tenant for life*).

ANOTHER
FORM.

The within-named L. (*the lessee*) has executed on the land
demised by the within-written Indenture an improvement
authorized by the Settled Land Act, 1882, for or in connexion
with building purposes.

XXIX.

WITNESSING *part of a* CONVEYANCE *on a* SALE *by the*
TENANT *for* LIFE, *the* TRUSTEES *of the* SETTLEMENT
joining to give a RECEIPT *for the* PURCHASE-MONEY.

NOW THIS INDENTURE WITNESSETH that in pur-
suance of the said agreement, and in consideration of the sum
of £—— paid by the said P. to the said X. and Y. the
receipt whereof they hereby acknowledge, the said A. (*tenant
for life*), in exercise of the power for this purpose conferred
upon him by the Settled Land Act, 1882, and of all other
powers enabling him in this behalf as beneficial owner, hereby
conveys, &c.

XXX.

WITNESSING *part of a CONVEYANCE on SALE by the ABSOLUTE OWNER of ONE MOIETY, and the TENANT for LIFE of the OTHER MOIETY; the TRUSTEES of the SETTLED MOIETY receiving half the PURCHASE-MONEY.*

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £1000 paid as to the sum of £500 part thereof to the said A. (*absolute owner of one moiety*), and as to £500 the residue thereof to the said X. and Y (*the trustees of the settled moiety*) the receipt of which sums the said A. and X. and Y. hereby respectively acknowledge the said A. as beneficial owner of one moiety of the said hereditaments and the said B. (*tenant for life of settled moiety*) in exercise of the power for this purpose conferred upon him by the Settled Land Act, 1882, and of all other powers enabling him in this behalf, as beneficial owner of the other moiety of the said hereditaments hereby convey to the said P. and his heirs ALL THAT, &c.

XXXI.

CLAUSE *supplementing the POWER of INVESTMENT contained in sect. 21 of the Act.*

INVEST-
MENT
CLAUSE.

AND IT IS HEREBY DECLARED that, in addition to the modes of investment specified in the 21st section of the Settled Land Act, 1882, it shall be lawful for the trustees of the settlement for the time being to invest any capital money arising under the said Act in or upon the stocks, funds, and securities of any British colony or dependency, or the preference shares or stock of any Railway Company in Great Britain or Ireland incorporated by Special Act of Parliament and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, or any debentures or debenture stock issued under the Local Loans Act, 1875, or upon the security of leaseholds held for a term of which sixty years at least shall be unexpired at the time of such investment.

XXXII.

APPOINT-
MENT OF
TRUSTEES
OF THE
SETTLE-
MENT.

APPOINTMENT *of* TRUSTEES *of the* SETTLEMENT.

AND IT IS HEREBY DECLARED that the said X. and Y shall be trustees of these presents for the purposes of the Settled Land Act, 1882.

XXXIII.

ANOTHER
FORM, A
SINGLE
TRUSTEE
BEING EM-
POWERED
TO ACT.

APPOINTMENT *of* TRUSTEES *of the* SETTLEMENT, *a SINGLE TRUSTEE being* EMPOWERED *to* ACT.

AND IT IS HEREBY DECLARED that the said X. and Y., and the survivor of them, shall be the trustees or trustee of the settlement within the meaning of the Settled Land Act, 1882, and that it shall be lawful for such survivor to receive any capital trust money of the settlement (see s. 39), and that any notice by the tenant for life, or other limited owner given to such survivor shall be valid and effectual to all intents and purposes (see s. 45).

XXXIV.

POWER TO
APPOINT
NEW
TRUSTEES.

NOMINATION *of the* TENANT *for* LIFE *as the* PERSON *to* APPOINT NEW TRUSTEES *under the* CONVEYANCING ACT, 1881, *sect.* 31.

AND IT IS HEREBY DECLARED that the power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, may be exercised by the said A. (*tenant for life*) during his lifetime.

XXXV.

APPOINTMENT of PERSONS to MANAGE the SETTLED LAND MANAGE-
MENT OF
LAND
DURING MI-
NORITIES.
during MINORITIES.

AND IT IS HEREBY DECLARED that the said X. and Y., or other the trustees or trustee for the time being of these presents, shall be the persons to exercise the powers of management conferred by the 42nd section of the Conveyancing and Law of Property Act, 1881.

XXXVI.

PROVISO EXTENDING the COVENANTS for TITLE of a PROVISO
EXTENDING
COVENANTS
FOR TITLE.
TENANT in TAIL to the ACTS and DEFAULTS of PRIOR
OWNERS under the SETTLEMENT.

PROVIDED ALWAYS that the covenants for title on the part of the said C. implied in these presents by virtue of the Conveyancing and Law of Property Act, 1881, shall extend to the acts and defaults of the said A. and B. as fully as if the title of the said C. had been derived through the said A. and B.

XXXVII.

FORMS of PRAYER for PAYMENT of COSTS.

- A. That the costs of this application may be taxed as between solicitor and client, and paid out of the said sum of Costs out
of corpus. £——, capital money in Court to the credit of, &c.
- B. That the said trustees of the settlement may be at liberty out of any capital moneys in their hands as such trustees to pay and retain the costs, and costs, charges and

Costs out
of corpus.

expenses, respectively, of the petitioners, of and relating to this application.

- C. That the costs of all parties to this application, including in such costs any charges and expenses by the petitioners X. and Y. properly incurred, may be taxed as between solicitor and client ; and that the amount of such costs, charges and expenses, when so taxed as aforesaid, may be raised by the sale of a sufficient part of the said sum of £—— Consolidated £3 per cent. Annuities standing in the names of the petitioners X. and Y. as such trustees as aforesaid and by them paid or retained accordingly.
- D. That the costs, &c. (*taxation as in C.*) and that the amount of such costs when so taxed as aforesaid may be declared to be a charge upon the settled land, and that the petitioner A. (*tenant for life*) may be at liberty to raise the same by mortgage of a sufficient part of the settled land, and for that purpose to convey the fee simple in such part of the settled land as shall be included in the said mortgage as a security for the said sum to be ascertained as aforesaid, the interest on such mortgage to be kept down by the petitioner A. during his life, and by the successive limited owners of the settled land so long as they shall be entitled thereto in possession, and that the amount so raised by mortgage as aforesaid may be applied by the petitioner A. in payment of the said taxed costs of all parties to this application.
- E. That the said X. and Y. (*trustees of the settlement*) may be directed to pay out of the first capital moneys coming to their hands, as trustees of the said settlement, the costs of this application, and the costs and expenses incurred by the petitioner in relation to the scheme for improvements submitted by him as aforesaid, including therein the cost of preliminary surveys, reports of surveyors, and of obtaining the said certificate of the Land Commissioners.
- F. That the said A. (*tenant for life*) may be ordered to pay to the petitioners (*the trustees of the settlement*) their costs of this application, such costs to be taxed in case the parties differ. (See s. 44.)

Costs payable by
tenant for
life.

- G. That the costs of the petitioners X. and Y., including any charges and expenses by them properly incurred, may be taxed as between solicitor and client; and that they may be at liberty to retain out of the income of the capital money invested in their names as aforesaid, the amount of such costs, charges and expenses when so taxed as aforesaid.

XXXVIII.

FORM of "ACCOUNTS" to which MONEYS paid into COURT under the ACT may be placed in the BOOKS at the CHANCERY PAY OFFICE (a).

1. To the credit of *Ex parte A. (tenant for life)* The account of capital money arising under the Settled Land Act, 1882, of which the said A. is tenant for life.
2. To the credit of *Ex parte A. (tenant for life)* The account of the purchase moneys of the ——— estates of which the said A. was tenant for life.
3. To the credit of ——— In the matter of the trusts of the will of T. deceased, dated the ——— day of ———, The account of proceeds of sale of timber set aside as capital money.
4. To the credit of *Ex parte A. tenant for life*, In the matter of the Settled Land Act, 1882.

(a) As to the importance of opening the account under an appropriate heading, see *Re Jervoise*, 12 Beav. 209, where a large number of forms are set out. The principle to be kept in view under this Act is, that the title of the account should indicate the property from which the money arises, or the person who is entitled as limited owner, his disability appearing on the face of the title.

XXXIX.

FORMS of TITLES of PETITIONS, &c. (a).

N.B.—In the matter of the Settled Land Act, 1882, must be added in every case.

1. In the matter of the Belton Estates in the county of ——— settled by an Indenture dated the ——— day of ———.
2. In the matter of the trusts of a settlement dated the ——— day of ——— whereby lands in the parish of ——— in the county of ——— were limited in trust for A. for life with remainders over.
3. In the matter of the trusts of the will of ——— deceased, dated the ——— day of ——— whereby lands, &c. (*short description*) were devised to trustees upon trust for A. for life.
4. In the matter of a settlement dated the ——— day of ——— under which A. is tenant for life of the settled land.

(a) Under the Leases and Sales of Settled Estates Act, all petitions, &c., were required to be entitled in the matter of the property in question: Consol. Ord. XLI. r. 15; which sometimes made the title of most unwieldy length. See *Re Burnley's S. E.*, 23 W. R. 546, where Hall, V.-C., expressed an opinion that it was only necessary to express so much as would make the matter intelligible to the Court. The necessity of minute description was abolished by "The Settled Estates Act Orders, 1878," r. 2, which required all petitions, &c., to be entitled "In the matter of the estates settled" [by the settlor or settlors, naming one of them, and referring to the instrument by which the settlement shall have been created, and mentioning the parish or place and county in which the lands, messuages or tenements proposed to be dealt with are situate]. The object of the title was, in proceedings under those Acts, to indicate the property to be sold, *Re Thompson's S. E.*, John. 418; here there seems to be no such necessity, and a general reference to the settlement would seem to be sufficient.

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